The ethics of care or the ethics of justice? : a middle way

Thesis

The Ethics of Care or the Ethics of Justice?: A Middle Way

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Thesis Abstract

The objectives are to examine the tension between the ethics of care and the ethics of justice, offer critical analysis and develop an amalgam of key elements from both. A more sufficient framework for moral decision-making will be proposed and its validity assessed.

Part One investigates the ethics of care, beginning with a critical analysis of Carol Gilligan's approach to the ethics of care and justice, leading to an exploration of the nature and content of care from key authors in the debate. By focusing on nursing the tensions surrounding care are highlighted. Critical analysis draws out key themes from care including persons, relationships, context and responsibilities.

Part Two examines the ethics of justice, concentrating on the substantive theories of John Rawls and Alasdair MacIntyre. Through critical analysis the need for minimum standards of protection for the vulnerable in society is highlighted. The thesis emphasises and argues for justice as equality, fairness and equity, the importance of persons, community, rationality, justification, fittingness, morality, duties and obligations.

Part Three argues for an amalgam of key themes from both the ethics of care and justice. This model consists of the crucial role of context, persons and relationships, responsibilities, justice and appropriateness in moral decision-making as a framework for a middle way. After arguing for its sufficiency in theory, it is tested in practice by application to the Child B case. The thesis argues a middle way model is more adequate than either the ethics of care or justice alone for critically examining the decisions and justifications offered in this case.

In conclusion, critical reflection on the theory and practice of a middle way model is offered, and its potential for further application and development regarding moral decision-making and training for the caring professions explored.

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Abbreviations

DV	*In a Different Voice*
TJ	*A Theory of Justice*
AV	*After Virtue*
WJWR	*Whose Justice? Which Rationality?*

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Introduction

Thesis Genesis and Development

The origin of this thesis lies in the debate between the ethics of care and the ethics of justice. The tensions between 'feminine' and 'masculine' approaches to moral decision-making highlighted the two spheres.[1] Upon reading Carol Gilligan's *In a Different Voice*,[2] the vast debate in moral theory and feminist literature regarding both ethics became apparent. Some authors advocated the need to emphasise the ethics of care and a 'female' approach to moral decision-making. This was in response to traditional 'male' moral theory which, it was claimed, had not recognised the adequacy and appropriateness of the less abstract and more contextual approach of women.[3] Critics of the ethics of care, or 'female' ethic, highlighted its weaknesses and often emphasised the need for the ethics of justice, abstract principles and rules.[4] A danger was in polarising much of the debate and implying either that women primarily approach moral decision-making from a contextual and relational

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[1] Diana T. Meyers and Eva Feder Kittay, eds., *Women and Moral Theory*, (Totowa: Rowman and Littlefield, 1987). They provide a useful summary of the debate in their introduction. Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development*, (Cambridge: Harvard University Press, 1982). Gertrud Nunner-Winkler, "Two Moralities? A Critical Discussion of an Ethic of Care and Responsibility versus an Ethic of Rights and Justice" in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (New York and London: Routledge, 1993), 143-56. Joan C. Tronto, "Beyond a Gender Difference to a Theory of Care" in *Justice in Political Philosophy*, vol. 2, *Critiques and Alternatives*, ed. Will Kymlicka, (Brookfield: Edward Elgar Publishers, 1992), 520-39. Diemut Elisabeth Brubeck, *Care, Gender, and Justice*, (Oxford: Clarendon Press, 1995).

[2] Gilligan, *DV*.

[3] Gilligan, *DV*, 6-9, 18-19. Meyers and Kittay, *Women and Moral Theory*, 3-16. Jonathan Dancy, "Caring about Justice," Philosophy 67 (1992) : 447. Patricia Ward Scaltsas, "Do Feminist Ethics Counter Feminist Aims?," in *Explorations in Feminist Ethics: Theory and Practice*, eds. Eve Browning Cole and Susan Coultrap-McQuin, (Bloomington: Indiana University Press, 1992), 15-16. Nunner-Winkler, "Two Moralities?," 143-5. Tronto, "Beyond a Gender Difference to a Theory of Care," 240-1.

[4] Nunner-Winkler, "Two Moralities?," 143-56. Eve Browning Cole and Susan Coultrap-McQuin, eds., *Explorations in Feminist Ethics: Theory and Practice*, (Bloomington: Indiana University Press, 1992), 1-11. Rita Manning, "Just Caring," in *Explorations in Feminist Ethics: Theory and Practice*, eds. Eve Browning Cole and Susan Coultrap-McQuin, (Bloomington: Indiana University Press, 1992), 45-54. Moira Gatens, "Between the Sexes: Care or Justice?," in *Introducing Applied Ethics*, ed.

perspective, while men primarily approach it from an abstract and principled view,[5] or, if accurate, that one approach was superior to the other. Some theorists argue not only for the superiority of the ethics of care or the ethics of justice, but that because of their distinct natures and orientations the two approaches to morality are incompatible.[6]

Within the initial stages of exploring the care versus justice debate the idea and core of the thesis emerged. It was that people actually appeal to and utilise both ethics in making moral decisions.[7] The problem is that while many theorists recognised both ethics have something to offer in morality, a sufficiently coherent and comprehensive exploration of the nature and content of an integration of care and justice was not clearly evident.[8] Moral decision-making need not be a choice between

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Brenda Almond, (Cambridge: Blackwell, 1995), 42-57. Tronto, "Beyond a Gender Difference to a Theory of Care," 520-39. Scaltsas, "Do Feminist Ethics Counter Feminist Aims?," 23-4.

[5] Gilligan, *DV*. Meyers and Kittay, *Women and Moral Theory*, 3-10. Virginia Held, "Feminism and Moral Theory," in *Women and Moral Theory*, eds. Diana T. Meyers and Eve Feder Kittay, (Totowa: Rowman and Littlefield, 1987), 112-13. Annette C. Baier, "What do Women Want in a Moral Theory?," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (New York and London: Routledge), 19-32.

[6] This view was highlighted by the second supervisor. See Dancy, "Caring about Justice," 464. He claims an amalgam of the ethics of care and justice is not possible because there is an 'ineradicable tension between the two.' See also Gatens, "Between the Sexes: Care or Justice?," 53-4. Gatens points out that some feminist moral theory presents the 'care stance' and 'justice stance' as exclusive and exhaustive approaches, although she disagrees. Interestingly, as I analysed the literature further, it became apparent that a majority of theorists recognise the ethics of care and justice are, in fact, compatible to some degree. See footnotes 4, 7 and 8.

[7] Mary Brabeck, "Moral Judgment: Theory and Research on Differences between Males and Females," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 39-45. Catherine G. Greeno and Eleanor E. Maccoby, "How Different is the 'Different Voice'?," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 193-198. Lawrence J. Walker, "Sex Differences in the Development of Moral Reasoning: A Critical Review," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 157-76.

[8] Isa Aaron, "Caring and Principles – Opponents or Partners?," Proceedings of Philosophy of Education 44 (1988) : 126-35. Robin S. Dillon, "Care and Respect," in *Explorations in Feminist Ethics: Theory and Practice*, eds. Eve Browning Cole and Susan Coultrap-McQuin, (Bloomington: Indiana University Press, 1992), 72-77. Dancy, "Caring about Justice," 447-66. Manning, "Just Caring," 45-54. Elizabeth Ann Bartlett, "Beyond Either/Or: Justice and Care in the Ethics of Albert Camus," in *Explorations in Feminist Ethics: Theory and Practice*, eds. Eve Browning Cole and Susan Coultrap-McQuin, (Bloomington: Indiana University Press, 1992), 82-8. Marilyn Friedman, *What are Friends For?: Feminist Perspectives on Personal Relationships and Moral Theory*, (Ithaca and London: Cornell University Press, 1993), especially part two. Joy Kroeger-Mappes, "The Ethic of Care vis-à-vis the Ethic of Rights: A Problem for Contemporary Moral Theory," Hypatia: a Journal of Feminist Philosophy 9 (1994) : 108-31. Brubeck, *Care, Gender, and Justice*.

the ethics of care and justice, a 'feminine' or 'masculine' approach. They may be compatible and complementary and both may be necessary for a balanced approach to morality. The aim of the thesis is to explore ways of creating *one*, but by no means the only possible, amalgam between care and justice which produces a useful means of approaching moral decisions. This is a middle way. It provides a more balanced and sufficient moral framework, incorporating elements from both the ethics of care and the ethics of justice.

In order to investigate this possibility of a middle way, a more specific context which provided a testing ground for it and demonstrated the tension between care and justice was needed. The arena of health care, and more particularly nursing, provides such a context.[9] The changes within and professionalisation of nursing raises questions about the nature of care[10] and the role of justice in the theory and practice of nursing. The tension between care and justice is found particularly within nursing literature,[11] providing a more concrete context for investigating this debate. In dealing with patients this tension is exhibited between nurses and other professionals, e.g. doctors and managers, particularly regarding treatment decisions, patient care and consent, and nurses' advocacy and professional autonomy. It also can arise among nurses themselves, as their clinical views and personal values differ.[12]

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[9] Barbara A. Carper, "The Ethics of Caring," Advances in Nursing Science 1 (1979) : 11-19. Jean Harbison, "Gilligan: A Voice for Nursing?," Journal of Medical Ethics 18 (1992) : 202-5. Judith A. Cohen, "Caring Perspectives in Nursing Education: Liberation, Transformation and Meaning," Journal of Advanced Nursing 18 (1993) : 621-6.

[10] Peter Allmark, "Can there be an Ethics of Care?," Journal of Medical Ethics 21 (1995) : 19-24. Joan Bottoroff et al., "Comparative Analysis of Conceptualisations and Theories of Caring," Image: Journal of Nursing Scholarship 23 (1991) : 119-26. Cohen, "Caring Perspectives in Nursing Education: Liberation, Transformation and Meaning," 621-6.

[11] Sara T. Fry, "The Role of Caring in a Theory of Nursing Ethics," Hypatia: a Journal of Feminist Philosophy 4 (1989) : 88-103. Jeanne Ross Boyer and James Lindemann Nelson, "A Comment on Fry's 'The Role of Caring in a Theory of Nursing Ethics'," Hypatia: a Journal of Feminist Philosophy 5 (1990) : 153-8. Carper, "The Ethics of Caring," 11-19. Harbison, "Gilligan: A Voice for Nursing?," 202-5.

[12] Verena Tschudin, *Ethics in Nursing: The Caring Relationship*, (Oxford: Butterworth-Heinemann, 1992), 93-130.

In the thesis the examination of the ethics of care and the ethics of justice, and the possibility of an integration between the two, involves exploring Gilligan's claims regarding women and men's approaches to moral decision-making (chapter one), key theories and the nature of care (chapter two) and justice (chapters three and four), offering a critique of both ethics, drawing out key themes to propose one version of a middle way in theory (chapter five), testing its application in practice (chapter six) and critically reflecting on the usefulness and further application of a middle way model (conclusion). Chapters one through four will offer separate descriptive and critical sections, the latter involving two levels of critique. The first level includes more general critique, while the second level of critique shows the need for some middle way perspective highlighting the themes and elements important to an amalgam of the ethics of care and justice.

Chapter One: Carol Gilligan's Theory

Introduction

The theories and ideas put forth by Carol Gilligan in her book *In a Different Voice*[1] have helped highlight and focus debate on the ethics of care and justice. An ethic of care is concerned with concrete persons, relationships and responsibilities,[2] while an ethic of justice focuses on abstract rules, rights and principles.[3] She discusses and interprets her empirical studies conducted on women and men to draw attention to different ways in which people approach, view and make moral decisions. In exploring the tensions and connections between care and justice, Gilligan identifies a "different voice" in moral reasoning, which is based not on abstract principles, rights and rules,[4] but contextual decision-making,[5] responsibility in relationships and inter-connection with others.[6]

Gilligan's theories have been the impetus for significant discussion and debate in many fields.[7] Within health care, Gilligan's theories provide a means of offering care, recognising the importance of relationships, responsibilities and context, while also acknowledging the need for justice to provide consistency, equality and fairness of treatment and set limits.[8]

Part of Gilligan's significance for feminist theory is the distinction she makes between an ethic of care and an ethic of justice.[9] She draws attention to what she claims is a strong male-oriented bias in research regarding moral development which

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[1] Gilligan, *DV.*
[2] Ibid., 19, 73.
[3] Ibid., 19, 73.
[4] Ibid., 19, 22, 73, 100.
[5] Ibid., 22, 100.
[6] Ibid., 19, 73.
[7] See pp. 20-7.
[8] See chapters 5 and 6.
[9] Karen Green, *The Woman of Reason: Feminism, Humanism and Political Thought*, (Oxford: Polity Press, 1995), 152. Susan Moller Okin and Jane Mansbridge, eds., *Schools of Thought in Politics:*

has excluded women and their different approach, often labelling a them as less morally mature.[10] Perhaps more fundamental issues arising from her theories are whether or not women and men *are* distinctly different in their approaches to moral development, the implications of emphasising relationships as opposed to abstract principles, an ethic of care over and against an ethic of justice, and whether these different approaches are due to nature, nurture or both.

In investigating Gilligan's claims further, first we will explore the problem she identifies in developmental psychology regarding moral reasoning. Then we will examine her hypothesis, qualifications, empirical studies and conclusions. Finally, critical responses to Gilligan's work and the possibility of appealing to both the ethics of care and justice in a moral framework will be explored.

Gilligan's Theory

Gilligan claims this "different voice"[11] in moral reasoning has not been sufficiently acknowledged or represented in psychological studies[12] done primarily on men.[13] She argues psychological theorists have implicitly adopted male experience as the norm and thus fallen into an observational bias against women.[14] According to Gilligan, this bias can be found at least as far back as Freud, who based his psycho-sexual developmental ideas on the male child and Oedipus complex, excluding the

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Feminism, vol. 1, (Aldershot: Edward Elgar, 1994), xv. In their introduction, Okin and Mansbridge claim that 'the most influential single voice in this debate has been that of Carol Gilligan...'.

[10] *DV*, 6-9, 18-19. *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, trans. James Strachey, vol. 7, *Three Essays on the Theory of Sexuality* (London: The Hogarth Press, 1961). *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, trans. James Strachey, vol. 19, "Some Psychical Consequences of the Anatomical Distinction Between the Sexes" (London: The Hogarth Press, 1961). Nancy Chodorow, "Family Structure and Feminine Personality," in *Woman, Culture and Society*, eds. Michael Zimbalist Rosaldo, Louise Lamphere, and Joan Bamberger, (Stanford: Stanford University Press, 1974). Nancy Chodorow, *The Reproduction of Mothering*, (Berkeley: University of California Press, 1978). In particular see Lawrence Kohlberg, *The Philosophy of Moral Development*, (San Francisco: Harper and Row, 1981).

[11] Ibid., 2.

[12] Ibid., 1-2, 156.

female child from the formulation of his theories.[15] She claims when Freud was unable to fit girls into his masculine conception, he saw them as envying that which they missed. Noting the strength of their pre-Oedipal attachments to their mothers, he observed a developmental difference.[16] In response to Freud's view, Gilligan claims that

> ...a problem in theory became cast as a problem in women's development, and the problem in women's development was located in their experience of relationships.[17]

For Gilligan, women's departure from Freud's male norm of development contributed to their being labelled as inferior.

Gilligan uses Lawrence Kohlberg to illustrate her claims about male-biased theories of psychological development. Kohlberg defines three levels of moral development: the pre-conventional, conventional and post-conventional levels.[18] Gilligan describes the pre-conventional level as being egocentric, deriving morality from individual needs and exhibiting an inability to construct a shared or societal viewpoint. In the conventional level, the right and good are seen as maintaining the status quo of societal norms and values, which in turn sustain relationships, groups,

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[13] Ibid., 69-70.
[14] Ibid., 6.
[15] This is despite the fact that most of his patients were female.
[16] *DV*, 6-7. Freud, *Three Essays on the Theory of Sexuality*, 257-8.
[17] Ibid., 7.
[18] Lawrence Kohlberg, *The Philosophy of Moral Development: Moral Stages and the Idea of Justice*, (London: Harper and Row, 1981), 409-12. See also *DV*, 72-3. Kohlberg's three levels each incorporate two stages of development, which move from lesser to greater moral maturity. Stage one is that of punishment and obedience, where right is conceived as literal obedience to rules and authority, avoiding punishment, and not doing physical harm. Stage two is that of individual instrumental purpose and exchange and right is serving one's own or other's needs and making fair deals regarding concrete exchange. The third stage is that of mutual interpersonal expectations, relationship and conformity. The right is seen as fulfilling a good, or nice, role, being concerned about other people and their feelings, keeping loyalty and trust with partners, and being motivated to follow rules and expectations. Stage four is that of social system and conscience maintenance, where right is fulfilling one's duty in society, upholding the social order, and maintaining the welfare of the society or group. The fifth state is that of prior rights and social contract or utility, and the right is upholding the basic rights, values and legal contracts of a society, even when they conflict with the concrete rules and laws of the group. The sixth, and final, stage is that of universal ethical principles and it assumes they provide guidance that all humanity should follow.

communities and societies. The post-conventional level reflects on societal values and constructs moral principles that are universally applicable, thus transcending a societal vision.[19] If what Gilligan claims about women's moral development focusing around relationships and connection, rather than abstract principles, is true, then women, in contrast to men, may not be able to attain the higher post-conventional level of moral maturity on Kohlberg's scale and consequently be viewed as deficient.[20]

In expanding her critique of Kohlberg, Gilligan notes that although Kohlberg claims universality for his stage sequence, based on research from an all male sample, those groups excluded from his original sample, such as women, *rarely* reach the higher stages.[21] Women's moral judgments tend to reach the third of Kohlberg's six stages, where morality is perceived in interpersonal terms and goodness is viewed as helping and pleasing others. Gilligan argues Kohlberg's view presents a paradox for women, because traits which traditionally defined the 'goodness' of women, namely their care for and sensitivity to the needs of others, label them as deficient.[22] Thus, according to Gilligan, Kohlberg implies that only if women enter the traditional arena of male activity on male terms will they see the inadequacy of their perspective of goodness and be able to progress, like men, to higher stages of moral development. In these stages, relationships must be subordinated to rules and rules to universal

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[19] Gilligan, *DV*, 72-3. See also Kohlberg, *The Philosophy of Moral Development*, 409-12.
[20] Ibid., 18-19. Even if what Gilligan claims is not true, she notes that women tend to score lower than men on Kohlberg's scale of development.
[21] Ibid., 18. Gilligan notes Constance Holstein, "Development of Moral Judgment: A Longitudinal Study of Males and Females," Child Development 47 (1976) : 51-61 and Elizabeth L. Simpson, "Moral Development Research: A Case Study of Scientific Cultural Bias," Human Development 17 (1974) : 81-106.
[22] Ibid., 18.

principles of justice,[23] making it unlikely for women to reach these final stages of moral development.

Gilligan critically notes that as Kohlberg's version of moral development derives its conception of maturity from the study of men's lives, it reflects the importance of individuation and a recognition of human rights in their development.[24] This is in contrast to women's development which involves relationships and responsibilities. From women's perspective, "the moral problem" arises from conflicting responsibilities not competing rights, and it requires a "contextual and narrative" not a "formal and abstract" mode of thinking for its resolution.[25] Gilligan highlights women's distinctive moral framework, as that of care rather than justice, stating

> This conception of morality as concerned with the activity of care centres moral development around the understanding of responsibility and relationships, just as the conception of morality as fairness ties moral development to the understanding of rights and rules.[26]

Gilligan claims when developmental constructs are derived from the study of women, different moral conceptions inform the description of moral development. This different construction of morality by women may be the primary reason for their failure to develop like men within Kohlberg's system.[27] Gilligan recognises women's moral development based on the more contextual ethic of care, relationships and responsibilities as different from, but not inferior to, men's moral development based on the more abstract ethic of justice, fairness and rights.[28]

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[23] Ibid., 19. These are stages four, five and six. Gilligan cites L. Kohlberg and R. Kramer, "Continuities and Discontinuities in Child and Adult Moral Development," Human Development 12 (1969) : 93-120.
[24] Ibid., 18-19.
[25] Ibid., 19.
[26] Ibid., 19.
[27] Ibid., 19.
[28] The themes of context, relationships, responsibilities and justice will be developed throughout the thesis. See especially chapter 5.

To illustrate further the differences between male and female constructions of morality, Gilligan discusses Nancy Chodorow's view of development.[29] Chodorow believes the primary caretaker for both sexes in the first three years of life is usually female and that the core of personality development is firmly established in this time. In light of these claims, Chodorow argues female gender identity is developed within a relationship where mothers experience their daughters as more alike and a continuation of themselves and their sons as a male opposite. Thus, girls view their identity more in light of *attachment* and boys experience a stronger sense of *separation* from their mothers, and thus view their identity in terms of *individuation*.[30] So, according to Gilligan,

> Since masculinity is defined through separation while femininity is defined through attachment, male gender identity is threatened by intimacy while female gender identity is threatened by separation. Thus males tend to have difficulty with relationships, while females tend to have problems with individuation.[31]

Although Gilligan does not offer much evidence to support these claims and her conclusions may be highly debatable,[32] she argues that this "descriptive difference" between men and women becomes a "developmental liability" when mature development is defined, in psychological literature, by increasing separation. From this view, Gilligan claims, that "women's failure to separate then becomes by definition a failure to develop".[33] Thus, women are judged as being less morally developed than or morally inferior to men.

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[29] Gilligan, *DV*, 7-9. See Chodorow, "Family Structure and Feminine Personality," and *The Reproduction of Mothering*. Cf. John Broughton, "Women's Rationality and Men's Virtues: A Critique of Gender Dualism in Gilligan's Theory of Moral Development," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 137. He claims Gilligan misinterprets Chodorow's view of women, and that Chodorow characterised women's psychological structure not in terms of a simple tendency to connect, but a complex and fragile preservation of the tension between merger and individuation.
[30] Gilligan, *DV*, 7-8. Emphases added.
[31] Ibid., 8.
[32] See pp. 20-3.
[33] Gilligan, *DV*, 8-9.

As opposed to being viewed as deficient, Gilligan argues women's moral judgments provide an alternative perspective on moral maturity, by which developmental differences between the sexes and their implications can be assessed.[34] Women's perspective is an alternative to the male-oriented approach which emphasises abstract principles. Gilligan describes this approach as a "morality of fairness", which views moral development as an understanding of rights and rules,[35] or a "morality as justice", which links development to the logic of equality, reciprocity and fairness.[36] A morality focused on "care", in contrast, ties moral development to relationships and responsibilities.[37] Gilligan believes women define themselves in the context of relationship and the ability to care.[38] For her, women's "distinctive" psychology entails a greater orientation toward relationship and interdependence and implies a more contextual mode of moral judgment. Thus, it offers a different moral understanding from men's.[39]

In light of these differences between the male-oriented ethic of justice and the female-oriented ethic of care, Gilligan claims that "it becomes clear why, from a male perspective, a morality of responsibility may appear inconclusive and diffuse, given its insistent contextual relativism", and "why a morality of rights and non-interference may appear frightening to women in its potential justification of indifference and unconcern."[40] However, Gilligan does link a morality of responsibility, relationship and care to women[41] and a morality of rights, fairness and justice to men.[42] Thus, she

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[34] Ibid., 22.
[35] Ibid., 19.
[36] Ibid., 73. For further discussion of reciprocity see pp. 48-52, 220-2.
[37] Ibid., 19.
[38] Ibid., 17.
[39] Ibid., 22.
[40] Ibid., 22.
[41] Ibid., 17-19, 22.
[42] Ibid., 19, 73.

seems to be offering one explanation for the female-male, care-justice divide in moral reasoning.

Although Gilligan identifies women's ethic of care approach to moral reasoning as distinct and different from men's ethic of justice, she is careful to qualify her claims about her research. She states explicitly that

> The different voice I describe is *characterised not by gender but theme.* Its association with women is an empirical observation, and it is primarily through women's voices that I trace its development. But this association is not absolute, and the contrasts between male and female voices are presented here *to highlight a distinction between two modes of thought and to focus a problem of interpretation rather than to represent a generalisation about either sex.*[43]

In elaborating her claims about difficulties of interpretation, Gilligan argues she

> ...began to notice the recurrent problems in interpreting women's development and to connect these problems to the repeated exclusion of women from the critical theory-building studies of psychological research.[44]

Despite stating she does not link the "different voice" exclusively to women, Gilligan notes that the difficulties she identified within developmental theories were primarily in relation to women's development. So there are some inconsistencies between Gilligan's claims regarding women and men's approaches to moral reasoning and the qualifications she seeks to make about her theory.[45]

Gilligan also refrains from making explicit claims about the origins of the differences in development. She states,

> *No claims* are made about the origins of the differences described or their distribution in a wider population, across cultures, or through time. Clearly, these differences arise in a social context where factors of social status and power combine with reproductive biology to shape the experience of males and females and the relations between the sexes.[46]

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[43] Ibid., 2. Emphases added.
[44] Ibid., 1. Gilligan claims this 'problem of interpretation' arose against the background of her work concerning the psychological descriptions of identity and moral development.
[45] See pp. 21-3.
[46] Gilligan, *DV*, 2. Emphases added.

So, Gilligan may be claiming that both the social environment and biology, 'nature and nurture', contribute to the formation of and interactions between the sexes, their moral development itself as well as their views of moral development.

Gilligan draws her claims about the two distinct moral voices from observations based on her empirical studies. One study centres around the Heinz dilemma.[47] Heinz's wife is going to die if he does not obtain a very expensive drug for her which he cannot afford and the chemist refuses to lower its price. Two eleven year-olds, Jake and Amy, are presented with the dilemma of whether Heinz should steal the drug to save his wife. Gilligan observes Jake is clear that Heinz should steal the drug. Seeing the conflict as one between life and property, he discerns the logical priority of life and justifies his choice on that basis.[48] According to Gilligan, Jake's ability to apply deductive logic to the dilemma, recognise the difference between morality and law and the potential limits of law, would score him at the conventional level on Kohlberg's scale. She claims Jake's thought process "points toward the principled conception of justice that Kohlberg equates with moral maturity."[49]

Amy, by contrast, is more evasive in her answers. She states that Heinz should not steal the drug, but that his wife should not die either. Amy proposes that Heinz find a means of obtaining the money to buy the drug. According to Gilligan,

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[47] Ibid., 25-6. It is interesting to note this dilemma is taken from Kohlberg. Gilligan states it was designed to measure moral development in adolescence by presenting a conflict of moral norms and exploring the logic of its resolution.

She does not seem to recognise or acknowledge explicitly the potential irony here of using a dilemma from the very 'male-oriented' perspective which she criticises. She claims although current theory sheds light on the logic of the boy's thought, it has little to say about the girl's thought. Perhaps the closest she comes to acknowledging this irony is when she states that "Adding a new line of interpretation [on current developmental theory], based on the imagery of the girl's thought, makes it possible not only to see development where previously development was not discerned but also to consider differences in the understanding of relationships without scaling these differences from better to worse." Gilligan might justify the usage of the Heinz dilemma by claiming it illuminates the gap between women and men's moral development as shown in male-oriented developmental theory.

[48] Ibid., 26.

[49] Ibid., 27.

Amy does not construct the dilemma as one between property and law, but instead reflects on the impact Heinz's stealing might have on his relationship with his wife and locates the heart of the dilemma in the chemist's failure to respond to Heinz's wife.[50] Gilligan's more general claim is that Amy views the world in terms of relationships and connection rather than isolated individuals and a system of rules.[51] Gilligan believes that

> Failing to see the dilemma as a self-contained problem in moral logic, she [Amy] does not discern the internal structure of its resolution; as she constructs the problem differently herself, Kohlberg's conception completely evades her.[52]

Thus with reference to Kohlberg's stages of moral development Amy would score a stage lower in maturity than Jake, according to Gilligan. She claims this is because Amy's world is one of "relationships and psychological truths where an awareness of the connection between people gives rise to a recognition of responsibility for one another, a perception of the need for response."[53] From this perspective, Amy's understanding of morality seems "far from naive or cognitively immature", according to Gilligan. Instead "Amy's judgments contain the insights central to an ethic of care, just as Jake's judgments reflect the logic of the justice approach."[54] Gilligan upholds Amy's female version of framing moral dilemmas through an ethic of care and relationships as different from, and seeking a more adequate solution than,[55] Jake's male perspective based on an ethic of justice and abstract rules.

In further elaborating the role of relationship and connection, Gilligan claims the conflict between self and other is "the central moral problem" for women. How

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[50] Ibid., 28.
[51] Ibid., 29.
[52] Ibid., 29.
[53] Ibid., 30.
[54] Ibid., 30.
[55] Ibid., 30.

women resolve this dilemma is the subject of her abortion study.[56] In contemplating an abortion, three moral perspectives emerged which "denote a sequence in the development of the ethic of care", according to Gilligan.[57] In the first perspective, women initially focused on caring for themselves to ensure survival, but then came to view this attitude as selfish. They then began to develop a new understanding of the connection between self and others, namely responsibility. In the second perspective, the elaboration of this responsibility and its joining with "maternal morality" aimed to ensure care for the dependent and unequal. The good is equated with caring for others.[58] The third perspective focused on the dynamics of relationships and through a new understanding of the interconnection between self and other the tension between selfishness and responsibility is diffused.[59] Gilligan claims in this stage,

> *Care becomes the chosen principle of judgment* that remains psychological in its concern with relationships and response and *becomes universal in its condemnation of hurt and exploitation.*[60]

Through the abortion study, she claims that inflicting hurt is seen as selfish and immoral, while the expression of care, for others and oneself, is seen as the fulfilment of moral responsibility.[61]

Gilligan notes in the abortion study that "women" use the language of selfishness and responsibility which "defines the moral problem as one of obligation

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[56] Ibid., 70-1. If this is the central moral problem for women then contemplating an abortion *might* highlight the tension between self and other. Yet, in attempting to clarify and articulate women's moral voice in contrast to the traditional male moral voice Gilligan does not seem to recognise explicitly the potential female-oriented bias of an abortion dilemma study or provide an equivalent study of men for comparison. See p. 23.
[57] Ibid., 73-4.
[58] Ibid., 74.
[59] Ibid., 74.
[60] Ibid., 74. The need to avoid harm and exploitation is vital within any society or community and is discussed further in chapters 3 and 5.
[61] Ibid., 73.

to exercise care and avoid hurt."[62] She claims this study suggests that women view moral dilemmas as conflicting responsibilities.[63] She recognises the tensions between different responsibilities, as she mentions conflicting responsibilities which entail the "sacrifice of somebody's needs",[64] taking or avoiding responsibility for choices,[65] and viewing attention to one's own needs as being selfish as opposed to honest and fair.[66] Gilligan argues that "once obligation extends to include the self as well as others, the disparity between selfishness and responsibility dissolves".[67]

She also claims

> Thus a progressively more adequate understanding of the psychology of human relationships - an increasing differentiation of self and other and a growing comprehension of the dynamic of social interaction - informs the development of an ethic of care.[68]

Gilligan argues that this ethic, particularly as it reflects a cumulative knowledge of human relationships, focuses around a "central insight" that the self and other are interdependent.[69] This realisation denotes moral development within the ethic of care.

Gilligan argues for the centrality of the concepts of care and responsibility in women's construction of the moral domain and that the close ties in their thinking between conceptions of the self and morality are exhibited in the abortion study. Ultimately, according to Gilligan, this study highlights the need for "an expanded

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[62] Ibid., 73. Here, Gilligan explicitly ties women, not the "different voice" or a female perspective, to the notion of responsibility and care in moral reasoning. This again highlights the inconsistencies in her theory.

Conceptions of obligation and duty will be linked to responsibility and important for the development of the thesis. See pp. 223-9.

[63] Ibid., 105.

[64] Ibid., 80.

[65] Ibid., 85.

[66] Ibid., 85.

[67] Ibid., 94.

[68] Ibid., 74.

[69] Ibid., 74.

developmental theory" which includes, rather than excludes, the differences highlighted by "the feminine voice".[70]

> In describing moral development more generally, Gilligan notes
>
> The concepts of *attachment* and *separation* which depict the nature and sequence of infant development appear in adolescence as *identity* and *intimacy* and then in adulthood as love and work. This reiterative counterpoint in human experience, however, when moulded into a developmental ordering, tends to disappear in the course of its linear reduction into the equation of development with separation....The limitation of this rendition is most apparent in the absence of women from accounts of moral development.[71]

Alternatively, the reality of continuing connection in moral development is lost or obscured. For women these "developmental markers" of separation and attachment, seem to be fused in some way. This points to the incompleteness of their development, according to Gilligan.[72]

Gilligan argues that women and men typically recognise the importance of different truths in their moral identity. Women address the continual process of attachment which creates and sustains the human community, while men address the role of separation in defining and empowering the self.[73] Furthermore, Gilligan claims the distinct gender constructions of identity, women focusing on self-sacrifice and men on freedom of self-expression, create different problems for further development. The former creates a problem of truth and compromise and the latter a problem of human connection. These difficulties are related as the "shrinking from truth" creates distance in relationship and separation removes part of the truth.

Gilligan notes in her college student study, men's return from "exile and silence", by which she presumably means isolation and separation, parallels women's return from equivocation. Gilligan states cryptically that intimacy, or attachment, and truth

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[70] Ibid., 105.
[71] Ibid., 151. Emphases added.
[72] Ibid., 155-6.

converge in the discovery of the connection between integrity and care for both sexes.[74]

In light of the developmental differences Gilligan finds between women and men in morality and identity, she comments not only on the problems raised, but the means of correcting them. She argues that for men, as power and separation secure their identity, intimacy is the key to bringing them back into connection. This connection, or intimacy, makes it possible for men to see the effects of their action on others and the cost to themselves. Thus, the experience of relationship helps end men's isolation and potential indifference, according to Gilligan.[75] Alternatively, because women define their identity through relationships of intimacy and care, they experience moral dilemmas differently. Gilligan cryptically claims difficulties for women arise when "relationships are secured by masking desire and conflict is avoided by equivocation", as there is confusion about the "locus of responsibility and truth".[76] For women the critical experience is not intimacy but "choice", as the latter creates an "encounter with the self which clarifies an understanding of responsibility and truth."[77]

In concluding her remarks about the role of intimacy and choice for men and women, Gilligan argues that in the transition from adolescence to adulthood, "the dilemma" is the same for both sexes, namely a conflict between integrity and care. Yet viewed from difference perspectives, this dilemma "generates the recognition of opposite truths."[78] These two perspectives are reflected in different moral ideologies

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[73] Ibid., 156.
[74] Ibid., 157-8.
[75] Ibid., 163.
[76] Ibid., 164. Gilligan's comments here are obscure and unclear. She could be implying that women seek to avoid conflict through suppressing their desires, compromising their own wants, or by prevaricating in order not to hurt others.
[77] Ibid., 164.
[78] Ibid., 164.

as separation is justified by an ethic of justice, and attachment is supported by an ethic of care. She claims

> The morality of rights is predicated on equality and centred on the understanding of fairness, while the ethic of responsibility relies on the concept of equity, the recognition of differences in need. While the ethic of rights is a manifestation of equal respect, balancing the claims of other and self, the ethic of responsibility rests on an understanding that gives rise to compassion and care.[79]

Thus Gilligan highlights the differences between an ethic of justice, which focuses on equality, fairness and rights, and an ethic of care, which includes responsibility, equity and compassion.[80]

Although Gilligan does emphasise the differences between an ethic of care [81]and an ethic of justice, still she discusses the possibility of appealing to both in moral development. Interestingly, she claims

> Development for both sexes would therefore seem to entail an integration of rights and responsibilities through the discovery of the *complementarity* of these disparate views.[82]

She further describes this integration claiming that for women it happens through an understanding of the psychological logic of relationships which "tempers the self-destructive potential of a self-critical morality by asserting the need of all persons for care."[83] For men, this integration happens through "experience of the need for more active responsibility in taking care" which corrects "the potential indifference of a morality of non-interference and turns attention from the logic to the consequences of

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[79] Ibid., 164-5. For further discussion of equity and equality see pp. 46-8, 230-7.
[80] Rights imply responsibilities. If someone has a right to something, another person has the responsibility to see that this right is met and fulfilled. But do responsibilities imply rights? The logical answer is no. If someone has a responsibility, another person does not necessarily have the right to fulfil it. This would make little sense. It may be more logical and productive to talk of freedoms, duties and responsibilities rather than 'rights'. For further discussion of responsibilities and duties see pp. 137-40, 223-9, and rights see pp. 196-8.
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[82] Ibid., 100. Emphasis added. Although Gilligan's main focus is on the differences between the ethics of care and the ethics of justice, even she recognises their potential compatibility and the possibility of some integration or amalgam.
[83] Ibid., 100.

choice."[84] Thus Gilligan briefly explores the possibility of integrating an ethic of care and an ethic of justice within moral development and decision-making.

Through expounding Gilligan's theories we have seen that she identifies a "different voice" in moral reasoning, primarily connected to women,[85] which is in contrast to male-based moral development. She identifies this approach as an ethic of care which is based on responsibilities, relationships and connection, and a more contextual mode of decision-making.[86] Alternatively, an ethic of justice incorporates abstract principles, rights and rules, such as equality and fairness.[87] Despite her claims of finding gender-based differences in moral reasoning, Gilligan discusses the need for the sexes to appeal to both approaches and attempt some integration of "rights and responsibilities",[88] care and justice. Before elaborating further on this notion of integration, we will examine critical responses to her work.

Critique of Gilligan

A number of critiques have been raised in response to Gilligan's theories propounded most prominently in *A Different Voice*. These objections may be divided primarily into two categories - those which focus on her hypothesis about the existence of different moral orientations and development for women and men and those concerned about her research methodology. Gilligan's views will be evaluated through various critiques and the possible integration of care and justice analysed through a discussion of one key critic.

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[84] Ibid., 100.
[85] Ibid., 2, 22.
[86] Ibid., 19, 22, 73.
[87] Ibid., 19, 73.

Gilligan's Hypothesis

Many critics disagree with Gilligan's hypothesis that there are sex-based differences in moral reasoning, claiming there are, in fact, mixed findings, with very few or no differences found.[89] Similarly Lawrence Blum, arguing from an impartialist perspective based on "impartiality, impersonality, justice, formal rationality, and universal principle", questions whether a care perspective is actually a distinct moral orientation.[90]

In response to such critiques, Gilligan cites three studies which she claims "confirm and refine the 'different voice' hypothesis".[91] She argues they show that the justice and care perspectives are distinct orientations that organise people's thinking about moral problems in different ways; that boys and men, who resemble those most studied by developmental psychologists, tend to define and resolve moral problems within the justice framework, although they do introduce considerations of care; the focus on care in moral reasoning, although not characteristic of all women, is characteristically a female phenomenon in the "advantaged populations" that have been studied.[92] For Gilligan, these findings provide empirical explanations for the equation of moral judgement with justice reasoning in theories derived from studies of

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[88] Ibid., 100.

[89] Brabeck, "Moral Judgment: Theory and Research on Differences between Males and Females," 39-45. Greeno and Maccoby, "How Different Is the 'Different Voice'?," 195. Walker, "Sex Differences in the Development of Moral Reasoning," 176. For a different conclusion see Diana Baumrind, "Sex Differences in Moral Reasoning: Response to Walker's (1984) Conclusion that There Are None," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 177-92.

[90] Lawrence A. Blum, "Gilligan and Kohlberg: Implications for Moral Theory," Ethics 98 (1988) : 472-91. He claims an impartialist could argue care is not a genuinely distinct moral orientation because acting from care is really a universalisable principle, or that care is a distinct orientation but is secondary to or validated from an impartialist perspective. For a response to Blum's article see Jonathan D. Adler, "Particularity, Gilligan, and the Two-Levels View: A Reply," Ethics 100 (1989) : 149-56.

[91] Carol Gilligan, "Reply to Critics," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 211-12. She refers to Nona Lyons, "Two Perspectives," Harvard Educational Review 53 (1983), 125-44. She also relies on Lyons' doctoral dissertation, as well as two others, as a basis for this claim.

males, but they also explain why the study of women's moral thinking changes and challenges the definition of the moral domain.[93]

In contrast to those who directly oppose Gilligan's hypothesis, some theorists agree with Gilligan's identification of different moral orientations, but disagree with the significance she gives it[94] or the reasoning behind it.[95] They argue that even if different moral orientations exist, they may not necessarily be gender linked or as dichotomised as Gilligan believes.

Gilligan seeks to clarify her theory in response to such critiques. She states the 'different voice' is characterised not by gender but by theme.[96] It is empirically linked to women, although Gilligan argues that the care perspective is not biologically determined or unique to them, but she cautions that this should not represent a generalisation about either sex. Her hypothesis highlights a distinction between two modes of thought, but makes no claims regarding the origins of these voices or their wider application.[97]

Gilligan's qualifications add confusion to her view rather than clarify it.[98] If she argues women *do* offer a distinct approach to moral development from men, which has been undervalued, then this "different voice" should be taken seriously and included in moral theory. If Gilligan claims the "different voice" is not gender related

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[92] Ibid., p. 212. Gilligan does not elaborate on her definition of "advantaged populations". She might be referring to women in Western as opposed to developing countries.
[93] Ibid., p. 212. Critics also take issue with her relation to Kohlberg's theories. Owen Flanagan and Kathryn Jackson, "Justice, Care, and Gender: The Kohlberg-Gilligan Debate Revisited," Ethics 97 (1987) : 627. John M. Broughton, "Women's Rationality and Men's Virtues: A Critique of Gender Dualism in Gilligan's Theory of Moral Development," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 137.
[94] Flanagan and Jackson, "Justice, Care, and Gender: the Kohlberg-Gilligan Debate Revisited," 624. Linda K. Kerber, "Some Cautionary Words for Historians," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 105-6.
[95] Nunner-Winkler, "Two Moralities?," 152-3. Linda J. Nicholson, "Women, Morality, and History," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 98, 100.
[96] See p. 12.
[97] Gilligan, "A Reply to Critics", 209.
[98] Ibid., 209. Gilligan, *DV*, 1-2.

or unique to women, then presumably men also utilise it. Gilligan does not explore this view. Yet, she does recognise that both men and women need to appeal to both an ethic of care and an ethic of justice to attain an integrated approach to moral development.[99] Thus her argument is insufficient to defend her view.

In investigating critiques of Gilligan's view of distinct moral orientations, we noted disagreement about separate spheres in moral reasoning, their nature and origins, and Gilligan's responses to these critiques. Critics go further, questioning not only Gilligan's hypothesis, but also the empirical base and methodology from which it emerged.

Gilligan's Methodology

In response to Gilligan's theories, critics have cast doubt on her methodology, particularly in relation to her data and evidence,[100] the female bias of her samples,[101] and the potential relativism of her views.[102]

In response to methodological critiques, Gilligan's key claim is that her argument was not statistical. It was not based on the representativeness of the women studied or on the generality of the data presented. Rather her argument was interpretative and hinged on the demonstration that the examples presented illustrated a different way of seeing moral discourse.[103] To support her claim that there is a voice different from those which psychologists have traditionally represented,

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[99] See pp. 19-20.
[100] Zella Luria, "A Methodological Critique," in *An Ethic of Care: Feminist and Interdisciplinary Perspectives*, ed. Mary Jeanne Larrabee, (London: Routledge, 1993), 200-1. Brabeck, "Moral Judgment," 38. Walker, "Sex Differences in the Development of Moral Reasoning," 160.
[101] Brabeck, 'Moral Judgment," 38. Luria, "A Methodological Critique," 200. Kerber, "Some Cautionary Words for Historians," 103. Within the abortion study Gilligan may shift from a description and interpretation of the twenty-nine women involved to a prescription for developmental theory as a whole. This shift may not be justified given her small, all-female sample. See Gilligan, *DV*, 3, 105.
[102] Brabeck, 'Moral Judgment," 46-7. Cf. Blum who argues Gilligan avoids relativism and individual subjectivism. Blum, "Gilligan and Kohlberg: Implications for Moral Theory," 476.
[103] Gilligan, "A Reply to Critics," 208.

Gilligan argues that she needs only one example. In response to interpretative critiques of her work, she argues that the best way to identify a common theme in women's voices is through a series of illustrations, so she relied on women's experience and close textual analysis of language and logic to define the actual terms of women's thinking.[104]

More specifically, Gilligan could have argued that because her data was intended to express a *different* approach to moral reasoning she chose not to use the traditionally structured, male-oriented methods of data collection and scoring. Instead she utilised female-oriented methods, which included personally observing and interacting with women's accounts of moral dilemmas and decisions and drawing conclusions from them.[105] Despite whether critics agree or disagree with her methodology, Gilligan's aim of obtaining attention and recognition for a "different voice" in moral reasoning seems to have been achieved, as demonstrated by the plethora of debate and discussion surrounding her theories.[106]

After investigating critiques of Gilligan's hypothesis and methodology, one key critic, Marilyn Friedman, analyses Gilligan's view of the relationship between care and justice and explores what she claims are more sufficient alternatives.

Friedman's Critique of Gilligan

Although critiques often focus on Gilligan's separate moral spheres, she also refers to an integration of care and justice in moral development.[107] This too comes

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[104] Ibid., 210.
[105] Cf. Walker, "Sex Differences in the Development of Moral Reasoning," 160 and Luria, "A Methodological Critique," 200. Walker lists longitudinal, cross-sectional and experimental evidence as being the "usual" means of supporting stage sequence claims, while Luria claims the "usual" rules of proving a psychological hypothesis include shared samples, procedures and scoring.
[106] See Greeno and Maccoby, "How Different Is the 'Different Voice'?," 193-8. Walker, "Sex Differences in the Development of Moral Reasoning," 157-76. Flanagan and Jackson, "Justice, Care, and Gender," 622-37. Blum, "Gilligan and Kohlberg," 472-91.
[107] Gilligan, *DV*, 73, 100.

under scrutiny. Marilyn Friedman argues care and justice overlap more than Gilligan has realised and are mutually compatible.[108] Friedman notes Gilligan does suggest mature moral reasoning about care incorporates considerations of justice and rights, but Gilligan's view only incorporates the recognition "that self and other are equal" to safeguard against care becoming too self-sacrificing, and this view "hardly does justice to justice".[109] People who treat each other "justly" are "providing a kind of care for each other", in an important, albeit limited, way,[110] and "morally adequate care involves considerations of justice".[111] Friedman notes Gilligan's view incorporates a flawed view of justice and fails to grasp its importance and nuances.

According to Friedman, Gilligan presumes a justice perspective emphasises only an individual's rights to non-interference by others. Gilligan fails to recognise positive rights, like welfare, which may be endorsed by a justice perspective, as well as the possibility of violence and harm in human inter-relationships and community.[112] For Friedman, justice, which in general includes giving people their due and treating them appropriately, is relevant to care as its considerations determine "appropriate ways to treat friends and intimates."[113] She argues distributive justice is relevant to close personal relationships as it constrains the potential imbalance involved in the maintenance of a relationship by calling for an appropriate sharing of the benefits and burdens by all the participants. Justice is important in the protection

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[108] Marilyn Friedman, *What are Friends For? Feminist Perspectives on Personal Relationships and Moral Theory*, (Ithaca: Cornell University Press, 1993), 118-19, 126-7. Friedman argues this may be one reason why men and women do not show a divergence of reasoning along the care-justice dichotomy, particularly a statistical difference.
[109] Ibid., 128. See Gilligan, *DV*, 149.
[110] Ibid., 119.
[111] Ibid., 127.
[112] Ibid., 132-3. See Gilligan, *DV*, 147. For further development of these themes see chapter 5.
[113] Ibid., 127. See pp. 237-45.

against harm, abuse and exploitation which are more feasible in close personal relationships because of the trust and intimacy involved.[114] Friedman states

> The concept of justice, in general, arises out of relational conditions in which most human beings have the opportunity, the capacity, and, for too many, the inclination to treat each other badly.[115]

Thus, Friedman concludes Gilligan is wrong to think the justice perspective neglects "the reality of relationships", but rather it is based on a "more subtle and multivalent assessment of the complexities of human relationships." Friedman believes the complex reality of social life encompasses the human potential for helping, caring for, nurturing *and* for harming, exploiting and oppressing others.[116] She concludes it might be wise to reconsider the seeming dichotomy of care and justice and to question the moral adequacy of either orientation dissociated from the other.[117] Both care and justice are necessary for a morally adequate perspective on personal relationships.[118]

One possible type of integration Friedman offers is

> ...to seek intimate, responsive, and committed relationships with people we know well enough to be reliably familiar with their needs, desires, beliefs...and to settle for abstract, rule-based, equal respect toward that vast number of others we cannot know in any particularity.[119]

While another involves trying to

> ...forge and sustain a dynamic, although uneasy, *balance between* abstract commitments to important values and principles (including equal respect for common moral personhood), on one hand, and particularised commitments to the people we care about, on the other hand.[120]

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[114] Ibid., 129-30. She argues when someone is harmed in personal relationships corrective justice has a role to play as he/she is owed some rectification.

[115] Ibid., 133. See Friedman, *What are Friends For?*, chapters 2 and 3. A breakdown in relationship implies falling short of some standard. This can lead to the affirmation and definition of standards. See chapter 5 for discussion of the content of standards, particularly justice, from which we have departed.

[116] Ibid., 133.

[117] Ibid., 133.

[118] Ibid., 134-5. See also chapter 5.

[119] Ibid., 138.

[120] Ibid., 138-9. Emphases added.

Rather than "to settle for" a dichotomization of the spheres of care and justice, Friedman supports an attempt to achieve and sustain a "balance between" abstract and particularised commitments,[121] justice and care, within morality.[122]

Critics have queried and disagreed with Gilligan's hypothesis and methodology regarding sex differences in moral reasoning. In particular, the inadequacies and dangers of her view of justice and personal relationships were noted and the possibility of an integration of care and justice explored. Gilligan's version of the relationship between care and justice requires further investigation.

Critique of Gilligan from a Middle Way Perspective

In further exploring Gilligan's theories first her emphasis on contextual decision-making and its implications within an ethic of care will be examined critically, particularly in relation to conflicting responsibilities, relationships and needs. Then her notion of an integration of care and justice will be explored.

Gilligan admits the care perspective encompasses "contextual relativism".[123] Her notion of care may be relative to both a particular individual's views about the content of care and what fulfils this in a specific situation. If this is accurate, then Gilligan's view of care seems to incorporate moral relativism. Moral relativism denies that any single moral code or view has universal validity and normative moral relativism holds it is wrong to pass judgment on others who have different values.[124] Such moral relativism could undermine Gilligan's claims and generalisations regarding moral development, as well as her prescription that the "different voice", or

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[121] Ibid., 138-9.
[122] For further discussion of integration see chapter 5 and 7.
[123] Gilligan, *DV*, 22.
[124] David Wong, "Relativism," in *A Companion to Ethics*, ed. Peter Singer, (Oxford: Blackwell, 1996), 442-3.

women's approach, should be recognised as valid and included in theories of moral development.[125]

Furthermore, Gilligan's contextual moral relativism does not provide any means of deciding between or assessing different theories of care in practice. Thus standards of care are not necessarily agreed in theory and will be difficult to maintain in practice. This situation leaves some people, i.e. the vulnerable and marginalised in society, in danger of being mistreated, exploited and harmed by others, whether unintentionally or intentionally.[126]

Within her view of care, Gilligan seems to assume that "connection" between people will result in their "recognition of responsibility".[127] This assumption may imply that very recognition of responsibilities will simply result in their fulfilment, at least to some degree. Yet, even *if* people *do* acknowledge responsibilities to others or themselves, individuals can choose to ignore them. Gilligan may be assuming too much or being overly optimistic in her view of connection, relationships, human nature and fulfilment of responsibilities.[128]

Gilligan claims that women frame moral dilemmas in terms of conflicting responsibilities[129] which may include the obligation to exercise care, avoid inflicting hurt,[130] and give attention to needs.[131] Gilligan is unclear about the actual content and means of deciding between responsibilities when they conflict.[132] In a moral dilemma, it is not always possible to avoid inflicting hurt altogether. People

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[125] Gilligan, *DV*, 1-2, 18-19, 156.
[126] For a means of protecting the vulnerable see chapters 3 and 5. See also Robert E. Goodin, *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities*, (Chicago: University of Chicago Press, 1985).
[127] Gilligan, *DV*, 30.
[128] For further discussion of optimistic and pessimistic perspectives of human nature see p. 59.
[129] Gilligan, *DV*, 105.
[130] Ibid., 73.
[131] Ibid., 80, 85.
[132] See p. 9.

sometimes have to choose between the lesser of two harms.[133] Gilligan seems aware of this tension, to some degree, as she states, in the abortion study, that

> When no option exists that can be construed as being in the best interest of everybody, when responsibilities conflict and decision entails the sacrifice of somebody's needs, then the woman confronts the seemingly impossible task of choosing the victim.[134]

As Gilligan notes potential conflict between needs, harms, best interests and responsibilities, her statement can imply some hierarchy of responsibilities, but she avoids offering any concrete means of choosing between harms. Gilligan's advocacy of fulfilling the moral responsibility or obligation to care may be too vague and insufficient to help resolve these conflicts.[135] Simply referring to a responsibility to care is unlikely to resolve the conflicting needs of and harms to the mother and foetus in an abortion decision. To care for the mother might support a decision to abort, while caring for the foetus would not, unless a person held the view that foetal life was not worth living or that the foetus was not a person. We need something more than a responsibility to care in enabling the prioritisation and fulfilment of responsibilities. This might include a notion of justice to assess different views of care, to prioritise needs and judge between conflicting harms.[136]

Gilligan does briefly discuss the need for both an ethic of care and an ethic of justice, or elements of them, to be utilised by women and men in moral decision-making.[137] For women the crucial experience in moral maturity involves making choices which clarify responsibility and truth, while for men it is experiencing

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[133] See pp. 269-71.
[134] Gilligan, *DV*, 80.
[135] Ibid., p. 73.
[136] For a further discussion of responsibilities and the role of justice see chapter 5. Some people may argue the recognition and fulfilment of responsibilities lies more clearly in justice, fairness and equality rather than under the auspices of care.
[137] See pp. 19-20.

intimacy.[138] Yet, difficulties arise in understanding the import of Gilligan's claims as she is vague about the meaning or content of "choice" for women.[139] It could include the choice to confront or avoid conflict, accept or reject responsibility. It seems more productive to consider that Gilligan actually might be referring to women's willingness to accept responsibility for their choices, and the consequences of them, as part of moral development.[140]

A second, more empirical, difficulty with Gilligan's notion of moral identity is her claim that intimacy will end men's "isolation", as it involves being in relationship and a connection to others.[141] It is unclear what type of relationship Gilligan prescribes to fulfil these criteria. She may be implying any or all relationships to others are sufficient to provide intimacy. If Gilligan is implying or assuming this, then she is not distinguishing between different levels of relationship, e.g. with family and close friends versus acquaintances, personal versus professional relationships. A person can interact and have relationships with numerous people, but not achieve a level of intimacy with any of them and even less likely with all of them. Gilligan needs to be more specific about the nature and content of the "relationship" which will contribute to men's connection with others, balance their moral development, and end their "isolation and potential indifference".[142] So her prescription offered is not sufficient.

In further critiquing Gilligan's views we have addressed some difficulties with her contextual and moral relativism and conflicting responsibilities between harms, needs and best interests. Her notion of care does not resolve such conflicts which indicates the need for justice to provide some standards for protection and

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[138] Gilligan, *DV*, 163-4.
[139] Ibid., 164.
[140] See p. 18. Also *DV*, 163-5.
[141] Gilligan, *DV*, 163.

prioritisation. Gilligan's proposed integration of care and justice is useful but unclear and insufficient. It reveals the need for a genuine middle way.[143]

Conclusion

Gilligan's theory highlights the crucial debate between an ethic of care and an ethic of justice in moral theory and development. She provides an important base from which to begin an exploration of these two approaches and the relationship between them. She links an ethic of care to relationships and responsibilities and an ethic of justice to abstract principles, rules and rights, including fairness and equality.[144] Even though the weight of Gilligan's theory rests on the existence of two distinct moral voices, she does propose some integration of an ethic of care and an ethic of justice in the moral development of women and men. Although Gilligan does not elaborate sufficiently or with great clarity about the interaction of both ethics, she does highlight some positive areas for further exploration. These include the interaction between an ethic of care and the elements of context, relationships and responsibilities. In particular, an analysis of Gilligan highlighted that responsibilities may involve exercising care for the self and others, meeting needs or avoiding hurt and exploitation. Both the ethics of care and justice will be vital to moral decision-making, we will investigate, analyse and critique them further.

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[142] Ibid., p. 163.
[143] A more complete integration will be developed throughout the thesis. See especially chapter 5. Alternatively, it could be argued that the insufficiency of Gilligan's integration suggests that care and justice are incompatible.
[144] See pp. 5-6, 11.

Chapter Two: The Ethics of Care

Introduction

In the previous chapter Gilligan's ethic of care was examined.[1] Now a more detailed analysis of the ethics of care and its basis in theories of caring will be explored. As there is no single dominant theorist which represents the ethics of care sufficiently, a variety of key theorists will be analysed. The chapter investigates themes which emerge within the ethics of care including the caring professions, nature and elements of care, caring relationship, personhood and the relationship between care and justice. It attempts to provide a structure and framework of analysis for both theoretical and practical themes and debate surrounding the ethics of care. This will be done through offering distinct descriptions and critiques of different ethics of care and an analysis of key themes from both, particularly regarding an amalgam with the ethics of justice.

The Caring Professions

One major exemplar of the caring professions is nursing. After investigating the theoretical in contrast to the more practical role of nurses, the tension between professional and personal elements of care and the role of values for caring professionals will be examined.

Views of Nursing

Alastair Campbell offers four different theories of nursing.[2] He is clear that perceptions of the nurse as "mothering figure", "angel" or "body expert" must be

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[1] See chapter 1.

[2] Alastair V. Campbell, *Moderated Love: A Theology of Professional Care*, (London: SPCK, 1984), 35, 49-51. He notes the Latin root words for nursing, *nutrire* and *nutricia*, mean nurturing or feeding and contain the strong image of a child suckling (34).

dispelled and proposes "skilled companionship" as an alternative.[3] Viewing nursing as essentially feminine in character leads to sexual stereotypes and discrimination.[4] Alternatively, the nature of nursing should combine tenderness and care for the body with respect for the individuality of the patient and consistent effort to promote independence and self-maintenance.[5] The dangers of seeing the nurse as an "angel" include a romanticised view of the nurse and nursing itself.[6] Viewing the nurse as "body expert" incorporates the danger of alienating patients through exclusive terminology and theoretical knowledge.[7]

In response, Campbell describes a better view of nursing as not being caught in sexual stereotypes, being professional without being distanced or manipulative, being close to the realities of bodily care, but also seeing the personal potential of every patient. This perspective also protects the nurse from overwhelming demands yet gives every patient full consideration. Campbell proposes viewing nursing as "skilled companionship".[8] The concept of companionship may provide a way of understanding "loving as caring". The advantages of this view are that it describes a closeness which is not sexually stereotyped. It implies movement and change. It expresses mutuality and requires commitment within defined limits.[9]

While Campbell discusses theoretical views of nursing in relation to the caring professions, Tschudin offers a more practical perspective. She describes nursing as a practical, hands-on job where experience, emotions, affection and relationships make

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[3] Ibid., 35, 49-51.
[4] Ibid., 35-7. He argues that apparent differences between men and women, such as men being more spatially oriented and more physically aggressive and women being better at verbalisation and less self-confident, do not justify sexual stereotypes or broad generalisations about typically male and female occupations. Both men and women are capable of empathising with others' distress, although he claims women may be more willing to do so. Campbell cites Margaret Brownlie Sutherland, *Sex Bias in Education*, (Oxford: Basil Blackwell, 1981), chapter 3. Cf. Gilligan's theory in chapter 1.
[5] Ibid., 42.
[6] Ibid., 40.
[7] Ibid., 44-5.
[8] Ibid., 49.

up the bulk of everyday work.[10] The nurse, as caregiver, must have self-knowledge, self-understanding and self-assertiveness. This caregiving involves empathy and the person must understand the sufferer in his/her position.[11] Tschudin states that caring is not unique *to* nursing, but it is unique *in* nursing. In general, caring is about people and is done with, for, to and as people.[12] Ultimately, her ideal picture in caring is person-oriented care where there is a giving which selflessly enhances the other.[13]

With regard to nursing, Patricia Benner and Judith Wrubel discuss the relationship between practice and theory. For them, it is "self evident that theory must be informed by real-world experience and experiments, which are in turn subject to theoretical interpretation."[14] More specifically, nursing theory has not been adequately shaped by nurses' experience and practice.[15] Benner and Wrubel claim that

> Nursing theorists have been overly constrained by the stringent requirements of the received view of formal theories and have found it difficult to capture the embodied, relational, configurational, skilful, meaningful, and contextual human issues that are central to expert nursing care.[16]

In response to these theoretical approaches, Benner and Wrubel view nursing practice as a "systematic whole with a notion of excellence inherent in the practice itself."

This premise asserts that excellence is embodied in practice; therefore, the practice is

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[9] Ibid., 48-9.
[10] Tschudin, *Ethics in Nursing*, p. 1. Author's emphases.
[11] Ibid., 9.
[12] Ibid., 1.
[13] Ibid., 12-13. She argues the term "care-receiver" is preferable to "patient" or "client" as the first implies someone who is static, ill and receptive and the second implies someone who shops for an item and pays for it. The term "care-receiver" is intended to include all those with whom nurses are professionally in touch.

Yet, if "care-receiver" is used in this way, Tschudin does not seem to allow for differentiation between patients and other professional colleagues. Nurses may not have broadly generalised relationships, but may need to acknowledge differences in professional interactions in order to be clear about boundaries, limitations and treat people appropriately.
[14] Patricia E. Benner and Judith Wrubel, *The Primacy of Caring: Stress and Coping in Health and Illness*, (Menlo Park and Wokingham: Addison-Wesley, 1989), 5.
[15] Ibid., 5.

a *moral* art not merely an applied science or technology.[17] Secondly, they argue theory is derived from practice. This is based on Heidegger's view that practical engaged activity is more basic than and prior to reflective theoretical thinking.[18] They conclude that

> ...theory shapes practice, and practice shapes theory. In the best of worlds, practice and theory set up a dialogue that creates new possibilities.[19]

So, the relationship between theory and practice might be dynamic and interconnected, rather than static with one being superior or prior to the other.

The tension between theory and practice may coincide with that between professional and personal elements in the caring professions.

Professional-Personal Tension in Caring

In relation to the caring professions, Campbell expounds the tension between professional and personal love. He seeks to clarify the character, or nature, of love imputed to the caring professions in nursing, medicine and social work. He argues the

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[16] Ibid., 6. See Patricia E. Benner, *From Novice to Expert: Excellence and Power in Clinical Nursing Practice*, (Menlo Park: Addison-Wesley), 1984.
[17] Ibid., 19-20. Emphasis added. They cite Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, (Notre Dame: University of Notre Dame Press, 1981). MacIntyre defines 'practice' as 'any coherent and complex form of socially established co-operative human activity through which goods internal to that form of activity are realised in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.' (187). See pp. 166-7.
[18] Ibid., 19-20. See Martin Heidegger, *The Basic Problem of Phenomenology*, trans. A. Hofstadter, (Bloomington : Indiana University Press, 1982). Benner and Wrubel do recognise the dilemma that some people may not see the need for teaching or having theories at all, if the expert practitioner's knowledge surpasses current formal knowledge. They argue that the expert has not always been an expert and there is a need for all possible guidance to avoid mistakes. Furthermore, an interpretative account of advanced practice creates public discourse and a basis for developing knowledge and practice.
[19] Ibid., 21.

need for rationality and detachment in professional work makes the notion of love in those relationships elusive and ambiguous.[20]

Campbell suggests it is possible to glean positive features for some kind of love from an analysis of professional caring. He draws out companionship from nursing, brotherliness from medicine and hopefulness from social work. Each of these imply a commitment to the other's welfare which transcends personal advantage and professional advancement.[21] He then discusses different descriptions of professional love and whether disinterested love can be genuine. There are four types of love which he distinguishes, citing Paul Tillich.[22] These are *epithymia* or desire, *eros* or the search for value, *philia* or friendship, and *agape* or the depth of love. Tillich argues that each form requires the others or it becomes distorted, and *agape* has a special relationship to the other forms of love because "it is a love which is also God", so it overcomes the ambiguity of the others.[23] Yet, as the more personal elements of professional care are added, like *philia* and *agape,* new complexities arise. Too much distance in the relationship prevents a proper response to need, while too little distance means that objective help cannot be offered. What is needed is "critical distance" and controlled sympathy.[24]

Recognising some tension between personal and professional love and caring, Campbell argues caring professionals should be "moderators of love".[25] The

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[20] Campbell, *Moderated Love*, 11-12. Within professional love, Campbell argues for the need to examine "the claim to purity" and motives of professionals and the relationships between self-interest, sympathy and altruism (70-86).
[21] Ibid., 70.
[22] Ibid., 73. See also Paul Tillich, *Morality and Beyond*, (London: Routledge and Kegan Paul, 1964), 40-1. Tillich describes *epithymia* as the libido (or desire) quality of love, *philia* as the friendship quality of love, and *eros* as the mystical quality of love. *Agape* is a quality of love, 'that which expresses the self-transcendence of the religious element in love.'
[23] Ibid., 73
[24] Ibid., 81-2. See also Campbell's discussion of Max Scheler, *The Nature of Sympathy*, trans. Peter Heath, (Routledge and Kegan Paul, 1954).
[25] Ibid., 84. He uses the example of the Moderator in the Presbyterian church, who keeps order in the assembly, but has no status himself and is merely the *primus inter pares* (or first among equals).

"meteorological" function of this role includes the necessary detachment involved in professional care. Caring professionals offer "moderated love" as they cannot love a person in the same way a relative or friend would, but still offer a form of love. They are employed to maintain a "balance of reason and emotion" and there is a necessary consistency in the care offered. In the ideal, for Campbell, "the climate of professional help is always a moderate one, temperate and without extremes and sudden changes."[26]

Furthermore, caring professionals' opposition to pain, illness and social disadvantage symbolises the ideal of *agape*, "a love which restores full value to every individual, however damaged, however oppressed, however bereft of hope."[27] In this ecclesiastical sense, the professional commitment is a religious one as professionals' actions and attitudes ultimately seek to conquer suffering, and hope for a full restoration. This hope is part of the transcendent element of all attempts to love.[28] Since the caring professions claim the ethics of *agape*, they can ensure through their work that the "disadvantages of weakness are evened out and each person is given equal consideration as an individual of worth."[29]

Amidst the tension between professional and personal love and distance, reason and emotion in the caring professions, values have an important role to play.

Values

Downie and Telfer define the conception of value in reference to the caring professions, particularly medicine and social work. Values are things which are

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[26] Ibid., 85.
[27] Ibid., 85.
[28] Ibid., 85-6. Campbell states this commitment expresses a hope which Christians symbolise by talking about incarnation, crucifixion, resurrection and a final victory when all is made new. So a*gape* embodies a complete and total hope.
[29] Ibid., 84. See discussion of the worth of individuals pp. 213-15.

valued for their own sake and there is no further reason for holding them in esteem.[30] To judge other people's values as right or wrong, one must have a set of objective values or principles.[31] Jeffrey Blustein argues impersonal, or objective, value is that which is inherent in something apart from one's caring about or wanting it.[32] In contrast, Blustein describes personal value as conferred by an individual on something in and through caring. Personal value is posterior to the activity of caring-about, as it is the value given to objects of care by caring-about them.[33] Tschudin describes values as the personal aspects and foundations of social and ethical living.[34]

Along with definitions there are different types of value. Downie and Telfer identify liking values, which people choose for themselves but do not necessarily want others to adopt and hold, and ideal values, which people expect and desire for others to hold. Ideal values have a universal quality that liking values do not have.[35] In contrast to types of value, Tschudin distinguishes between values, beliefs and attitudes.[36] The values held by caring professionals, whether objective or subjective, personal or impersonal and universal, underlie and impact decisions made and actions taken.

The nature of the caring professions, particularly nursing, tensions between theory and practice, professional and personal elements and the role of values have

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[30] Downie and Telfer, *Caring and Curing*, 7. This definition might be problematic as it seems somewhat circular.
[31] Ibid., 10.
[32] Jeffrey Blustein, *Care and Commitment: Taking the Personal Point of View*, (New York: Oxford University Press, 1991), 44.
[33] Ibid., 42-3.
[34] Tschudin, *Ethics in Nursing*, 28.
[35] Downie and Telfer, *Caring and Curing*, 8. The authors argue that aims express values, and discuss three types . Intrinsic aims are held because a person is part of a profession and they are values shared by all persons within it. Extrinsic aims might be held as a result of a particular profession, but go beyond those aims. Personal aims are those a person might pursue independently of a profession, and are not necessarily shared by other members (10).
[36] Tschudin, 28-9. She states values are less fixed and more dynamic than beliefs because there is an element of motivation involved. Beliefs are the most basic values, change the least, and are based more on faith than fact. Attitudes are dispositions or settled behaviours which are usually made up of beliefs.

been investigated. Underlying the practice of these professionals is the nature of care and caring.

The Nature of Care

In examining the nature of care different definitions, types and some ideal conceptions of care will be investigated before addressing the importance of caring.

Noddings argues to care for someone or something includes having regard for or inclination toward someone or something.[37] Blustein distinguishes four types of caring. He states "caring as liking" entails having affection for, being drawn to or being pleased by something.[38] To "have care of" is to be charged with the responsibility for supervising, managing, providing for, attending to needs, or performing services.[39] To "care that" is propositional, has a situation as its object and does not necessarily involve action, but does involve joy or distress if the situation is not relieved.[40] To "care-about" entails being personally invested in something and is the type to which Blustein devotes the most time. He distinguishes positive from negative caring-about. The former benefits, enhances, or keeps from danger,[41] while the latter destroys or diminishes people or things.[42]

Blustein further states caring-about requires having and taking an interest in the other. It is not possible to "care about" something one is not interested in, but one can "care for" something without taking much interest in it.[43] Caring-about presupposes the ability to identify some states or conditions of the objects of care as

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[37] Nel Noddings, *Caring: A Feminine Approach to Ethics and Moral Education*, (Berkeley and Los Angeles: University of California Press), 9.
[38] Ibid., 27.
[39] Blustein, *Care and Commitment*, 27.
[40] Ibid., 28.
[41] Ibid., 28.
[42] Ibid., 28-9. For critical analysis of some definitions within care see pp. 69-71.
[43] Ibid., 32.

good and bad, as not all caring is good or equally good care.[44] Blustein further distinguishes between personal care, which is particularistic because a person is cared-about independent of satisfying general conditions[45] and impersonal care, which is non-particularistic and non-preferential.[46] Personal and impersonal caring-about may be more subjective and objective, respectively.

For Mayeroff, the concept of caring entails relating to a person. This involves a long process of development. Caring is not merely liking someone, an isolated feeling, or a temporary relationship. To care for someone is to help him grow and actualise himself.[47] Noddings relates care to responsibility for another and restraining harm, claiming caring may mean being charged with the protection, welfare or maintenance of something or someone.[48] So care involves a focus on the other, which includes some benefit for him/her.

> Regarding the nature of care, Noddings states
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> Neither the engrossment of the one-caring nor the perception of attitude by the cared-for is rational; that is, neither is reasoned. While much of what goes on in caring is rational and carefully thought out, the basic relationship is not...[49]

Although care, and its foundational relationship, are fundamentally and "essentially non-rational", rationality does have a role to play within caring, albeit secondary.[50] Similarly, Blustein argues caring is emotional and not under direct voluntary control and people cannot stop and start caring at will.[51] So care and caring may have both emotional and rational dimensions.

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[44] Ibid., 33-4.
[45] Ibid., 147.
[46] Ibid., 146-7. In making this distinction, Blustein may avoid some impartialist criticisms. See Blum, "Gilligan and Kohlberg: Implications for Moral Theory," 472-91.
[47] Milton Mayeroff, "On Caring," International Philosophical Quarterly 5 (1965) : 462.
[48] Noddings, *Caring*, 9.
[49] Ibid., 61.
[50] Ibid., 35-6, 61.
[51] Blustein, *Care and Commitment*, 65. People can form intentions regarding caring-about and how to care.

We have explored different definitions and types of caring. Differing views of care may relate to its nature and the ideal or ideals of caring.

For Noddings ideals in caring are related to both natural and universal aspects of care. She states

> ...I shall claim there is a form of caring natural and accessible to all human beings. Certain feelings, attitudes and memories will be claimed as universal. But the ethic itself will not embody a set of universalisable moral judgments.[52]

Furthermore, Noddings rejects absolute principles and rules and universifiability as guides for ethical behaviour.[53] She is careful to claim this ethic of caring is not situation ethics, focusing on consequences, because it "locates morality primarily in the pre-act consciousness of the one-caring."[54] So, at least part of caring is "natural" and contains universal accessibility for all human beings, for Noddings.

This universal accessibility is connected to Noddings' ideal in caring, primarily the ethical ideal.[55] The ethical ideal includes discussion of "virtue" but not "the virtues" in abstract. The virtue of the caring ethic is built up in relation and reaches out and grows in response to the other.[56] In response to Hume's description of morality as being rooted in and founded upon some universal and natural feeling, "that which renders morality an active virtue",[57] Noddings views this "active virtue" morality as requiring two feelings. The first is the sentiment of natural caring. The second is the sentiment occurring in remembrance of the first.[58] She recognises that ethical caring requires an effort that natural caring does not, but states that an ethic of care seeks to maintain the caring attitude and is thus dependent upon natural caring,

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[52] Noddings, *Caring*, 27-8.
[53] Ibid., 5, 84-5.
[54] Ibid., 28.
[55] Ibid., 49.
[56] Ibid., 80-1.
[57] Ibid., 79. She cites David Hume, "An Enquiry Concerning the Principles of Morals," in *Ethical Theories*, ed. A. Melden, (Englewood Cliffs: Prentice Hall, 1967), 275.

not superior to it.[59] Noddings advocates both natural, universal and ethical caring within her ideal of care.

Part of this ideal involves the ethical and ideal self, for Noddings. The ethical self is an active relation between the actual self and a vision of the ideal self as one-caring and cared-for. It is born out of a fundamental recognition of relatedness, namely acknowledging "that which naturally connects me to the other, then re-connects me through the other to myself".[60] The nature of the ethical self stems from the "natural sympathy" felt for others and "longing to maintain, recapture or and enhance our most caring and tender moments."[61] Noddings argues that as both these sentiments may be denied, commitment is required to establish the ethical ideal.[62]

To nurture this ideal, Noddings emphasises the role of the cared-for. In so doing, she does not distinguish between "persons" and those not yet persons. Her regard for individuals is not based on "respect for persons" or "natural rights".[63] Noddings specifies three aspects of nurturing the ethical ideal. These are dialogue, practice and the "attribution and explication of the best possible motive".[64] Regarding the third, and most important element, Noddings claims

> ...the motive of the other has an a priori respectability that may be denied only with justification - if it is to be discredited at all.[65]

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[58] Ibid., 79.
[59] Ibid., 80-1. This may be seen as a partial answer to impartialist critiques. See Blum, "Gilligan and Kohlberg: Implications for Moral Theory," 472-91.
[60] Ibid., 49.
[61] Ibid., 104.
[62] Ibid., 104. See also pp. 53-4.
[63] Ibid., 120. Noddings claims her regard for beings is not derived from a concept of, but provides a basis for, respect for persons. Furthermore, she claims there are no "natural rights", only those people confer on one another out of natural inclination or commitment. See further discussion of rights, pp. 196-8.
[64] Ibid., 121-3.
[65] Ibid., 123.

Ultimately, the one-caring attempts to see the potential for the best possible motive and always to raise their view of the other and never lower it.[66] So Noddings emphasises the importance of motives and ideals within caring.[67]

In examining various types of caring, its nature and ideals, it is also necessary to explore its importance. Noddings argues caring is important in itself and to human beings.[68] Blustein recognises caring is important because it involves being invested in people or things.[69] Benner and Wrubel claim caring is primary because it "creates possibility", as it determines what matters to a person.[70] One of their main premises is that "caring is the essential requisite for all coping".[71] Benner and Wrubel offer no abstract lists for coping because caring is always specific and relational.[72] Caring is important by nature and in relation to people, things and coping.

Caring also can be important because of its implications. Mayeroff claims caring orders other activities around it. People tend to subordinate what is irrelevant and exclude what is incompatible with caring and its conditions.[73] Blustein argues through critical reflection on caring, people can take control of their carings, make decisions and take actions which are expressive of their carings.[74] The implications of caring can affect our priorities, while critical reflection on the objects and content of caring may be vital in our choices and actions in care.

In investigating definitions, types, foundations for and the nature of care, ideals and motivations, as well as the importance and implications of caring also have

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[66] Ibid., 124-4.
[67] For further discussion of motives and motivation see pp. 55-7.
[68] Noddings, *Caring*, 7.
[69] Blustein, *Care and Commitment*, 61. This relates to "caring about caring" which Blustein advocates. He prioritises the objects of caring, placing people, projects, principles and ideals first, and then "caring about caring".
[70] Benner and Wrubel, *The Primacy of Caring*, 1-2. They also claim that caring creates risk and vulnerability for a person because only things that matter are stressful.
[71] Ibid., 2.
[72] Ibid., 3. Cf. Gilligan's ethic of care, pp. 5-6
[73] Mayeroff, "On Caring," 473.

been explored. As caring involves a variety of aspects, some of its elements must be examined.

Elements of Care

Specific elements of care include love, compassion, needs, mutuality and reciprocity, types of responsibility and levels of commitment.

Love

There are different definitions, types and levels of love, particularly in relation to professional and personal realms.

Regarding professional love,[75] Campbell highlights companionship, brotherliness and hopefulness from nursing, medicine and social work respectively, which positively provide the basis of some form of love.[76] Caring professionals' role as "moderators of love"[77] may serve as an integration of these types of love.[78]

In contrast to professional love Blustein advocates personal love, involving particularity and irreplaceability.[79] Blustein claims an account of personal love is needed where the irreplaceability of the loved one must have something to do with the

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[74]Blustein, *Care and Commitment*, 65.
[75]See p. 57-8.
[76]Campbell, *Moderated Love*, 70.
[77] Ibid., 84-6.
[78] Ibid., 73. Campbell identifies *epithymia*, *eros*, *philia* and *agape* as four types of love. See Tillich, *Morality and Beyond*, 40-1. See also Blustein, *Care and Commitment*, 166-77. He discusses platonic, romantic, sexual and parental love.

Cf. types of love including *storge*, or "natural affection", *eros*, the attraction of desire particularly in sexual love, *philia*, or the affection of friends, and *agape*, or the self-giving love of God. See Sinclair B. Ferguson and David F. Wright, eds., *The New Dictionary of Theology*, (Leicester: Inter-Varsity Press, 1988), 398.
[79] Blustein, *Care and Commitment*, 191. He cites John McT. E. McTaggart, *The Nature of Existence*, vol. 2, (Cambridge: Cambridge University Press, 1927), part V, chapter xli, sections 465-68. Blustein argues against McTaggart's idea that love may be "because of qualities" but never "in respect of qualities". In personal love an individual should love the other for himself alone, not as an exemplification of a type. A person's characteristics should be relevant to loving that person for who he is. While, for McTaggart, love does not need to be justified, is not for a person's characteristics and is independent of justificatory reasons.

beloved's particular qualities and characteristics,[80] and the object of personal love is not just qualities, but a whole person.[81]

As one element of care, love may involve professional and personal levels, particularity and irreplaceability. One aspect of love may be compassion.

Compassion

The analysis of compassion will investigate definitions, descriptions and its place within the caring professions.

For Blustein, compassion involves viewing others as fellow human beings. It identifies the suffering of a person as possible for all human beings. Although it gives special attention to that person, it does not necessarily give preferential consideration of his/her needs against those of others.[82] Tschudin describes compassion more broadly "as a way of living born out of an awareness of one's relationship to all living creatures."[83] Yet, it is also a specific act in response to a specific need, involves more than kindness or caring and can be identified only through experiencing it.[84] For Downie and Telfer, compassion is part of the caring relationship, but it is not intrinsically possessed by all caring professionals. "What is morally required" is a steady maintenance of the awareness that the other person has the capacity to suffer.[85] So compassion may affect our view of humanity, be a necessary part of professional caring and arise in response to need.

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[80] Ibid., 193.
[81] Ibid., 194. He notes although one might admire a particularly attractive quality of the loved one, love is not just a response to that quality. Rather, one cherishes the configuration of instantiated qualities as manifested in his/her life over time (199). See pp. 215-17.
[82] Ibid., 146.
[83] Tschudin, *Caring in Nursing*, 5-6. She cites M. Simone Roach, *The Human Act of Caring*, (Ottawa: Canadian Hospital Association, 1987).
[84] Ibid., 5-6.
[85] Downie and Telfer, *Caring and Curing*, 90.

Need

Need or needs in caring involve descriptions and types of needs, and the basis for any responsibility to meet or respond to them.

Downie and Telfer distinguish between absolute needs, which a person must have for a reasonable human life, and relative needs, which are not necessary for a reasonable human life and are relative to a particular purpose. This distinction counters the objection that anything can be spoken of as a need.[86] They discuss needs in relation to interests and wants. Personal interests are defined as whatever meets an individual's own wishes, taken as a whole with regard to future and present. A person's needs are the most central part of these interests.[87] Downie and Telfer state interests are related to a person's desires and that which brings a person what he/she wants. This view implies the calculation of a person's wants but can include something wanted for its own sake, according to Downie and Telfer.[88] Needs may be absolute, or basic, and relative and are distinguishable from interests and wants. These distinctions can be linked to minimum and maximum levels of need and standards in society.[89]

In discussing possible bases for responding to needs, Downie and Telfer explore types of equality and equity. Derivative equality depends on another value before it comes into operation. Relative equality involves equality only with others in the same group. Egalitarian equality aims to serve people's needs in an equitable manner and redistribute benefits "simply to make people more equal when need is not

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[86] Ibid., 29.
[87] Ibid., 30.
[88] Ibid., 28. Interests may not always coincide with what a person wants. For example, a nurse may be torn between what a patient wants, such as not to have an enema or eat a meal, and what is in the patient's best interests.
[89] See pp. 225-9.

in question."[90] Relative and egalitarian equality presuppose that there is some criterion by which all humans are to be treated as equals. This criterion is that humans have intrinsic worth and value, which make these concepts derivative, because they are based on the value of respect for the individual, according to Downie and Telfer.[91]

As part of respect for persons, Downie and Telfer describe equal consideration as consistent treatment between people in accordance with some rule, or, preferably, equity where there are justified differences of treatment. These justified differences are based on need, where like cases are treated similarly and unlike cases are distinguished for "morally appropriate reasons".[92] Equity presupposes some criterion for these justifiable differences, such as desert, merit, or capacity to benefit.[93] There are different means of allocating resources with respect to needs. Equality and equity play an important role in response to needs.[94]

Furthermore, there is a responsibility to meet needs, according to Downie and Telfer. The philanthropic ideal of medicine and social work states that those in need ought to be helped, not just because the helpers want to do so, but because the needy make a claim on society.[95]

Noddings also comments on the responsibility to meet needs and care. In response to the need of the cared-for, Noddings claims the impulse to care, the "I

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[90] Downie and Telfer, *Caring and Curing*, 77. They recognise there is a further distinction to be made between equality of opportunity and that of satisfaction (78). See also p. 86.
[91] Ibid., 73-9. This view may be one way of countering the critique that the ethics of care allows inappropriate partiality or is inegalitarian. For further discussion of the worth of persons and conceptions of justice see pp. 213-15, 230-7.
[92] Ibid., 76.
[93] Ibid., 76-7. One key example is Aristotle's notion of justice as equity. See *Nichomachean Ethics*, trans. and introduction by W. D. Ross, (Oxford: Oxford University Press, 1980), 132-4.
[94] Equality and equity will be important themes in developing a middle way model. See pp. 230-7.
[95] Downie and Telfer, *Caring and Curing*, 12.

must do something", arises naturally in people, at least occasionally.[96] There is not a "demand" to care. People cannot demand others to experience this impulse, but they can choose to accept or reject it.[97] Noddings recognises some type of responsibility in meeting needs of others.

There are absolute and relative needs, interests and wants, which can be connected to minimum and maximum standards in society. Equality and equity are important in responding to and meeting needs. Furthermore, a response to needs also might involve a level of reciprocity and mutuality.

Reciprocity and Mutuality

To investigate the role of reciprocity and mutuality in caring involves definitions, descriptions of their content and relationship to needs, responsiveness, receptivity and care.

Noddings argues there is necessarily some form of reciprocity in caring.[98] Caring involves the one-caring and the cared-for and is completed when "fulfilled" in, or recognised by, both parties.[99] Reciprocity is the freedom, creativity and spontaneous disclosure of the cared-for that manifest themselves under the nurture of the one-caring.[100] The one-caring is receptive to the cared-for,[101] sees his best self and works with the cared-for to actualise that self.[102] The cared-for must receive and

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[96] Noddings, *Caring*, 81. Noddings states this impulse arises naturally for people, in the absence of pathology. So she may be implying that all people experience this impulse at some time.
[97] Ibid., 25, 49, 81. See also pp. 42-3.
[98] Ibid., 71. Cf. Lawrence L. Becker, *Reciprocity*, (London: Routledge and Kegan Paul, 1986), chapter 3. He argues the disposition to reciprocate is a moral virtue and people ought to be disposed, as a matter of moral character, to make reciprocity a moral obligation (74-5).
[99] Ibid., 68.
[100] Ibid., 73-4. She refers to Martin Buber, *I and Thou*, trans. Walter Kauffman, (New York: Charles Scribner's Sons), 1970.
[101] Ibid., 59.
[102] Ibid., 64.

recognise the care offered[103] and be responsive in some way,[104] for there to be a reciprocal[105] and caring relationship.[106]

Campbell also discusses the importance of reciprocity in a caring relationship. He claims a key to reciprocity in professional caring is that the needy person needs help but that help is most likely offered by someone who needs to be needed. Both parties in a covenant relationship are the recipients of gifts and neither is a totally selfless giver.[107] Recognising subtle needs of and rewards for the caring professional may protect against imbalance in the relationship and restore reciprocity.[108]

Along with reciprocity, Campbell discusses mutuality in professional caring.[109] The aim of mutuality is to improve knowledge.[110] A person must reveal his/her particularity, as the true welfare of the other always must be sought through sharing.[111] Because the knowledge of the helper has limits, there must be a meeting of the world of the patient and the world of the professional to gain the most useful and helpful knowledge.[112] Yet, Campbell recognises the patient is dependent on the carer in a way which is not mutual. Campbell cautions against a "false egalitarianism" which refuses to acknowledge the "appropriateness" of the professional help offered.[113] There may be appropriate and inappropriate levels of mutuality expected depending on the type of relationship involved, whether professional or personal.

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[103] Ibid., 69.
[104] Ibid., 71-2.
[105] Ibid., 74.
[106] Ibid., 69. The validity and practicality of requiring reciprocity raises difficulties. See pp. 69-70.
[107] Campbell, *Moderated Love*, 105. See pp. 58-9.
[108] Ibid., 106.
[109] Ibid., 90-5. He discusses mutuality in relation to particularity and incompleteness in professional caring.
[110] Ibid., 92.
[111] Ibid., 91.
[112] Ibid., 92-3.
[113] Ibid., 92. For further exploration of appropriateness see pp. 237-45.

Within personal caring, Noddings supports "an ethical responsibility for behaving as cared-for" in a situation where reciprocity and natural affection break down.[114] This involves the cared-for straining to receive what should come through a caring relationship and interpreting the one-caring in the best light. This state is "magnanimous receptivity".[115]

Noddings argues that "the receptive mode is at the heart of human existence".[116] It is reflexive and reflective,[117] and required of the one-caring and the cared-for. The one-caring conveys an attitude of receptivity through feeling the emotions of the cared-for, and commits herself to act accordingly.[118] The carer behaves appropriately by feeling with, or empathising, responding to, or acting for the cared-for.

Likewise, for Noddings, receptivity is required from the cared-for. If it is lacking a relationship cannot be characterised as one of caring. In identifying the logic of the caring relationship Noddings states

> (W, X) is a caring relationship if and only if:
> i) W cares for X (as described in one-caring) *and*
> ii) X *recognises* that W cares for X.[119]

The recognition of care means the cared-for receives the caring honestly, not hiding from or denying it. The receptivity to care becomes "part of what the one-caring feels

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[114] Noddings, *Caring*, 74-5.
[115] Ibid., 76-7. She notes two ways it can be achieved. First, the cared-for might have a long, rich history of being genuinely cared-for and thus meets the other with the expectation of being cared-for. Second, the cared-for may respond to the needs of the one-caring, consciously giving up his status as cared-for because of a concern for the other, and thus "behaves as" cared-for. Noddings argues the latter is not an authentic caring relationship because there is no cared-for.
[116] Ibid., 35. Noddings uses the term "existence" in the existential sense. She claims it means more than merely living or subsisting, and includes an awareness of, and commitment to, what we are doing and living.
[117] Ibid., 35.
[118] Ibid., 59. Cf. Mayeroff, "On Caring", 465-6. He also addresses receptivity in caring.
[119] Ibid., 68-9. Emphases added.

when she receives the cared-for".[120] In caring, for Noddings, receptivity is required of and inter-related for both parties, involving reciprocity and mutuality.

Noddings not only requires receptivity in a caring relationship, but part of this responsiveness involves engrossment.

> Caring is largely reactive and responsive. Perhaps it is even better characterised as receptive. The one-caring is sufficiently engrossed in the other to listen to him and to take pleasure or pain in what he recounts. Whatever she does for the cared-for is embedded in a relationship that reveals itself as engrossment and in an attitude that warms and comforts the cared-for.[121]

Engrossment is seeing and feeling with the other, not analysing how one would feel if one was the other. Engrossment is not only emotional feeling. There is a "characteristic and appropriate mode of consciousness in caring".[122] Sartre describes the condition in which the higher consciousness of rationality gives way to the lower, non-reflective consciousness of emotion as a "degradation of consciousness". Noddings argues "appropriate" or "inappropriate" and "effective" or "ineffective" are more fruitful terms for this shift.[123] In caring, a permanent or untimely move from affective engrossment to abstract problem-solving is "degradation", according to Noddings. She denies saying a temporal or lateral move to objective thinking is "degradation", but claims one should be able to invest in the appropriate mode with dominance.[124] In caring there are rational and emotional modes of consciousness, which can be appropriate or inappropriate in a given situation.[125]

Caring involves reciprocity and mutuality, which entail receptivity and engrossment. The appropriateness or inappropriateness of different levels of

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[120] Ibid., 69.
[121] Ibid., 19.
[122] Ibid., 33.
[123] Ibid., 34. She cites Jean Paul Sartre, 'The Emotions: Outline of a Theory,' in *Essays in Existentialism*, ed. Wade Baskin, (Secaucus, NJ: The Citadel Press, 1965), 189-300.
[124] Ibid., 34-5.

reciprocity or mutuality correspond to the type of caring relationship, whether professional or personal. This also may be true of responsibility in caring.

Responsibility

There are different types and levels of responsibility in care, including positive and negative.

Tschudin distinguishes between having responsibility, being answerable to someone or something usually defined by contract, and being responsible, a personal aspect which grows from engaging with people and their values.[126] According to Mayeroff, although people are liable for their actions in caring, this is not the pervasive sense of responsibility. Caring can be considered responsible behaviour and involves responsiveness to the other.[127]

Tschudin links responsibility to many other conceptions in a somewhat confusing way. She connects responsibility to rights and duty,[128] as well as freedom, rightness, goodness.[129] One person's rights, which are based on human needs, are another's duties.[130] Both persons and institutions can have rights and duties, which sometimes conflict. Rights tend to emphasise the negative of doing no harm, rather than the positive of care.[131] The conception of advocacy arose from the conflict between individual and collective rights and duties, and involves principles of justice,

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[125] The themes of appropriateness, rationality and emotion will be developed further throughout the thesis. See chapter 5.
[126] Tschudin, *Ethics in Nursing*, 74-5.
[127] Mayeroff, "On Caring," 472.
[128] Tschudin, *Ethics in Nursing*, 74-5. In contrast to responsibility, she claims duty is linked to something prescribed and contractual. Cf. Noddings who does not link responsibility to rights and duties. See p. 42.
[129] Ibid., 74.
[130] Ibid., 75-6. Tschudin argues the State make it its duty to protect its citizens by providing basic goods and services, such as clean water, food and shelter. These personal rights are in contrast to legal rights which include voting, protection and defence. For further discussion of duties and rights see pp. 109-10, 144-5, 176-8, 196-8.
[131] Ibid., 75-7. She notes the rights and duties of nurses, patients and institutions as examples.

fairness and non-maleficence, according to Tschudin.[132] As responsibilities can be linked to rights and duties, they may be positive, relating to care and benefit for the other, or negative, entailing non-maleficence or restraint of harm.[133]

James Gustafson and James Laney state that responsibilities arise within the "fabric" of relationships.[134] In general, structures of mutual responsibility are incorporated in human experience and involve habituation. Deviation from these habitual, or normal, expectations is considered irresponsible and untrustworthy.[135] Yet, habitual reactions are not always available to define or clarify responsibilities. Responsibilities also can conflict. So, moral reflection on and about them is needed. This includes assessing to whom and for what a person is responsible and the appropriateness of responsibilities, actions and choices.[136]

Responsibility can be contractual or personal, positive or negative, and involve behaviour, actions, rights, duties and conflict. Responsibilities also may entail a level of commitment.

Commitment

Commitment in caring involves different types and descriptions and is connected to values, identity and integrity.

Tschudin notes commitment may be defined as a complex affective response characterised by a convergence between one's desires and obligations and by a

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[132] Ibid., 77-8.
[133] See pp. 223-9.
[134] James M. Gustafson and James T. Laney, *On Being Responsible: Issues in Personal Ethics*, (London: SCM Press, 1969), 4-5.
[135] Ibid., 4-6.
[136] Ibid., 4-8. The authors note that choosing to be responsible for one thing often excludes the possibility of being responsible for another. This reality points to the necessity of accepting "limitation, finitude, and contingency in the moral life" (7).

deliberate choice to act in accordance with them.[137] Noddings also stresses the importance of a commitment to act within caring, as the feeling that I must act on behalf of the other may not be sustained. This commitment manifests itself through actually acting on behalf of the cared-for, taking a continued interest in his reality through an appropriate time span, and the continued renewal of that commitment.[138] Commitment involves a deliberate choice, thus exercising autonomy, and the positive focus of acting on behalf of another.

Blustein addresses "identity conferring commitments", as discussed by Gabriele Taylor and Lynne McFall.[139] These commitments involve a person's centrally important values, namely those that contribute to one's identity. Any change in them has far reaching consequences on the nature and order of other evaluations. These commitments are required to have personal integrity.[140]

Blustein claims comprehensive integrity is only possible if people's lives consistently reflect a coherent conception of the good and they are committed to living in accordance with coherent commitments.[141] Persons who are faithful to their core commitments, those that have privileged status in people's lives because they reflect what is most important to people, are persons of integrity. A person's integrity depends on these commitments and they constitute his/her identity.[142] A person who takes his/her own integrity seriously views himself/herself as an unique individual

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[137] Tschudin, *Caring in Nursing*, 8-9. She cites Roach, *The Human Act of Caring*. Cf. Benner and Wrubel, *The Primacy of Caring*, 48. They use "concern" rather than "commitment" because it is more qualitative and descriptive of meaning and is a key characteristic in the phenomenological view. See pp. 60-2.

[138] Noddings, *Caring*, 16. See also pp. 42, 47-8.

[139] Blustein, *Care and Commitment*, 49-51. See Gabriele Taylor, *Pride, Shame and Guilt*, (Oxford: Clarendon Press, 1985), 130-1. Lynne McFall, "Integrity," Ethics 98 (1987), 5-20.

[140] Ibid., 49-50. Taylor and McFall claim people have different identity conferring commitments and they need not be moral in nature.

[141] Ibid., 50-1.

[142] Ibid., 231.

with distinctive worth.[143] Integrity is also bound up with putting others' welfare as an overriding moral concern. Integrity is connected to commitment, does not entail transitory attachments or peripheral concerns, and its maintenance and attainment lie in the process of self-definition.[144] So, commitment relates to persons, their integrity and values.

In examining specific elements of care various descriptions, definitions, types and implications of love, compassion, need, reciprocity and mutuality, responsibility and commitment have been investigated. These elements are manifested in a caring relationship.

The Caring Relationship

In examining the caring relationship motivations, a demand or moral imperative to care, professional and personal levels, and conflicts will be explored.

Regarding the motivation behind caring, Downie and Telfer claim the philanthropic ideal can be an intrinsic aim and an ideal value.[145] The motivation for caring, particularly in the professional realm, might stem from a social base or some requirement to care.

For Noddings the motivation to care arises naturally, but there is not a demand to care.

> There can be, surely, no demand for the initial impulse that arises as a feeling, an inner voice saying 'I must do something,' in response to the need of the cared-for. This impulse arises naturally, at least occasionally...We cannot demand that one have this impulse, but we shrink from one who never has it.[146]

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[143] Ibid., 235.
[144] Ibid., 10-1. Blustein argues extreme apathy or indifference are incompatible with integrity because neither motivates our deepest commitments. See the discussion of holism pp. 215-17.
[145] Downie and Telfer, *Caring and Curing*, 11-12. See p. 47.
[146]Noddings, *Caring*, 81. This type of person is pathological.

This impulse can be rejected because a person shifts from "I must do something" to "Something must be done", removing that person from the possible people through whom the action will be accomplished. Alternatively, this impulse might be rejected because a person feels there is nothing she can do. If either happens without reflecting on what can be done for the cared-for, then a person does not care, as caring requires a response to this initial impulse with a commitment to act.[147] If caring is not natural, then one should call upon ethical caring. For Noddings, when in relation or when the other has addressed the one-caring, she must respond as one-caring. The imperative is categorical. When the relation is not yet established or can be "properly refused", the imperative is hypothetical.[148]

In moving from categorical and hypothetical to moral imperatives, Noddings claims the connection between caring and moral imperative is that most intimate situations of caring are natural.[149] The impulse and imperative to care for the other is natural and related to people's moral being, involves reflection and choice, and is grounded in a desire for relatedness.[150]

Noddings also addresses the ethical ideal in caring, arguing it seems preferable to place it above principles as a guide to moral action.[151] In a traditional view, moral principles must be universalisable.[152] For Noddings, this principle relies on the sameness of dilemmas and must prove human predicaments exhibit sameness.

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[147]Ibid., 81. Noddings claims this commitment to action may be overt or a commitment to think about what one might do. This latter case may involve abstaining from action, when one judges that any action is likely not to be in the best interests of the cared-for.

[148] Ibid., 86. She defines this proper refusal to care as when no formal chain or natural circle of caring is present. Although the notion of moral imperatives is taken from Immanuel Kant's philosophy, Noddings' approach is at odds with Kant's universalisable categorical imperative. See Immanuel Kant, *Foundations for the Metaphysics of Morals*, trans. Lewis White Beck, (Indianapolis: Bobbs-Merrill, 1969),with critical essays edited by Robert Paul Wolff, (London and New York: MacMillan, 1985), 36, 44. Also H. J. Paton, *The Moral Law: Kant's Groundwork of the Metaphysics of Morals*, (London: Hutchinson, 1961), 27-30.

[149] Ibid., 83. By "natural" she states the impulse to act on behalf of the other is innate, not instinctual.

[150] Ibid., 83. See pp. 63-6 for a further discussion of morality, rationality and relatedness.

[151] See pp. 41-3.

Sameness cannot be proved without moving away from the concrete situations. Noddings argues the condition which makes situations different cannot be satisfied by the application of principles developed out of sameness. Furthermore, the ethical ideal contains a universal component, the "maintenance of the caring relationship", so is not cast into relativism.[153]

Motivations for a caring relationship may arise naturally or from choice.[154] There may be a moral imperative, obligation or requirement to care.[155] This obligation may arise or be altered depending on whether the nature of the caring relationship is professional or personal.

In contrast to personal caring relationships, Downie and Telfer primarily discuss professional ones. They define relationship as the situation, bond or occasion which links two or more people together, or the attitudes people so linked have toward one another.[156] This "bond" relationship consists of formal rules which govern the provision of health care and welfare or the "ethics" of a profession, which are a vaguer set of rules and expectations.[157] Downie and Telfer argue the attitudes which "ought to" accompany the "bond" are impartial and objective ones.[158] A caring professional should have a non-judgmental attitude toward clients and their

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[152] For Kant, individuals should always act on principles which they could will to become universal rules. This is the categorical imperative. Kant, *Foundations for the Metaphysics of Morals*, 36.
[153] Noddings, *Caring*, 84-6. She cites Fredrich Nietzsche, *The Will to Power*, trans. Walter Kaufmann, (New York: Random House, 1967), 476, 670.
[154] Ibid., 81.
[155] Ibid., 81-3, 86-7. Downie and Telfer, *Caring and Curing*, 11-12. Blustein, *Care and Commitment*, 25. Blustein claims it is difficult to object to there being some things which people "ought" to care about, provided they are sufficiently general.
[156] Downie and Telfer, *Caring and Curing*, 83.
[157] Ibid., 84.
[158] Ibid., 85. They note inappropriate objective attitudes include the idea that clients are at the mercy of forces out of their control and are not self-determining agents. This attitude may be used to excuse behaviour and is deterministic toward clients.

choices,[159] compassion,[160] and may seek to build a personal relationship alongside the professional one.[161]

In a professional caring relationship, Campbell highlights the tension between personal and professional love.[162] Campbell discusses contract and covenant as two forms of professional relationships.[163] Both forms entail an agreement between parties which imposes mutual obligations, but they differ radically in spirit. Contracts define a precise set of relationships, are quid pro quo arrangements and calculate equal opportunity. Covenants are more dynamic and nourish, rather than limit, a relationship. They contain an element of promise and begin with a gratuitous act or gift. So spontaneous giving characterises the relationship.[164]

Campbell recognises a contractual approach protects clients against paternalism and exploitation and helps define expectations and obligations of and for professionals and clients. Ultimately, he claims the contractual approach ignores the fact that clients are not in a position to protect their interests and are rarely sufficiently well-informed to know exactly what is expected from the professional. They must rely on professional expertise to determine what must be done. Furthermore, the contractual approach can encourage minimalism and defensive over-treatment by professions. So, Campbell advocates the covenant approach as it avoids extremes due to self-interest, which neglects the client's welfare. The caring professions have a commitment to people which should promote an active concern and helpfulness.[165] A contractual relationship may provide minimum safeguards for patients and

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[159] Ibid., 87-90.
[160] Ibid., 90.
[161] Ibid., 90-2. They note dangers with this aspect of professional relationships and question its desirability.
[162] See pp. 35-7.
[163] Campbell, *Moderated Love*, 102-4. He cites William F. May, "Code, Covenant, Contract or Philanthropy" The Hastings Center Report 5 (1975) : 29-38.
[164] Ibid., 102.
[165] Ibid., 103-4. Cf. Rawls who advocates a social contract theory of justice. See pp. 93-4.

professionals, while a covenant relationship moves beyond protection to a maximum standard of benefit for the other.[166]

The tension within both personal and professional caring relationships may be due to differing motivations, expectations and choices. These differences may lead to conflict within a caring relationship.

For Noddings, conflicts in caring arise between it and abstract rules and principles,[167] different people's needs, desires, wants, best interests and beliefs.[168] Downie and Telfer recognise conflicts of interests and values. There may be problems in choosing between conflicting ideal values, and disagreements about how to apply them.[169] Conflicts in caring arise on many levels.

Within the caring relationship we explored whether its motivation is natural or based on obligation or imperative, the professional or personal nature, contract versus covenant, and conflicts in caring. A key part of the caring relationship is the persons involved.

<u>Personhood</u>

When exploring assumptions about and the nature of personhood and humanity, the context and content of personhood, moral and rational capacities, individual value and worth, human action and social roles will be examined.

Behind various views of persons lie different assumptions about human nature. John Locke is optimistic about men as free, equal and independent beings in

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[166] Campbell's description of a covenant relationship may represent one approach to integrating the ethics of care and justice. For further discussion of such integration and minimum and maximum standards see chapter 5.
[167] Noddings, *Caring*, 5, 84-5.
[168] Ibid., 55.
[169] Downie and Telfer, *Caring and Curing*, 10. See the discussion of values pp. 37-9.

the state of nature.[170] Men will consent to give up their powers and form a civil government, or political society, to provide limits, decide disputes and punish offenders.[171] In contrast, Thomas Hobbes argues nature has made men basically equal, but they can become enemies.[172] When men live without a common power to keep them all in awe, they exist in "that condition which is called war", the war of "every man, against every man".[173] So, underlying assumptions about humanity can be optimistic or pessimistic.

Context: Background Meaning

Benner and Wrubel address the context of persons, claiming people are formed by both personal and cultural history. Culture connects the present to the past and contains meanings that have been passed down.[174] Benner and Wrubel hold a phenomenological view and argue one key concept of what constitutes a person is an inhabited world that is a context organised according to human purposes.[175]

Regarding context, David Hesselgrave and Edward Rommen recognise its importance in shaping persons. They identify "contextualisation" as a new word and claim it denotes ways in which we adjust messages to cultural contexts.[176] Similarly, Aylward Shorter identifies culture as a comprehensive concept which embraces all

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[170] John Locke, *The Second Treatise of Civil Government*, ed. J. W. Gough, (Oxford: Basil Blackwell, 1946), chapter 2.
[171] Ibid., pp. 8-9 and chapter 8. Locke optimistically believes within that state of nature men may make promises which are binding on them "for truth and keeping of faith belong to men as men, and not as members of a society."
[172] Thomas Hobbes, *Leviathan*, ed. John Plamenatz, (London and Glasgow: Fontana, 1972), 141-2.
[173] Ibid., 142-3.
[174] Benner and Wrubel, *The Primacy of Caring*, 27-8.
[175] Ibid., 40.
[176] David J. Hesselgrave and Edward Rommen, *Contextualisation: Meanings, Methods, and Models*, (Leicester: Apollos, 1989), 28. They approach contextualisation from and evangelical theological perspective and claim it is part of how people go about doing theology. They note there is no clear consensus on the meaning of this word which may be problematic (33). Cf. Aylward Shorter, *Evangelisation and Culture*, (London and New York: Geoffrey Chapman, 1994), 30. Shorter identifies "inculturation" as interchangeable with "contextualisation" and the dialogue between faith and culture.

that individuals acquire or learn as members of a human society.[177] These authors highlight the impact of context and culture on persons.

Hesselgrave and Rommen comment on the individual's relation to the immediate situation. Context functions as a mechanism of reference for participants in a given situation.[178] Benner and Wrubel state Heidegger was concerned to illuminate contextual knowledge because most of a person's being is in a contextual situation.[179] Contextual knowledge includes background meaning, which is a shared, public understanding of what is, that which determines what counts as real for a person, and a way of understanding the world.[180] Background meaning is neither subjective nor propositional, but it is provided by the culture, subculture, and family to which an individual belongs. Furthermore, people can take in cultural background meaning from birth because they are embodied intelligences.[181]

Embodied Intelligence

According to Benner and Wrubel, another aspect of personhood is embodied intelligence.[182] They draw on Heidegger's view that the individual is a self-interpreted being.[183] A person has an effortless, non-reflective understanding of the self and the world,[184] and when embodied intelligence works well it is in this way.[185] People can be reflective, but abstract thought is not the only way they encounter the

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[177] Shorter, *Evangelisation and Culture*, 30.
[178] Hesselgrave and Rommen, *Contextualisation*, 166. Participants learn a given situation and reuse its major components, physiological, intellectual and emotional, by recalling from memory various experiences of it.
[179] Benner and Wrubel, *The Primacy of Caring*, 41. Cf. W. H. Walsh, "Knowledge in its Social Setting," Mind 80 (1971) : 321-36.
[180] Ibid., 46. They cite Martin Heidegger, *Being and Time*, trans. J. MacQuarrie and E. Robinson, (New York: Harper and Brothers, 1962).
[181] Ibid., 45-6.
[182] Ibid., 42-5.
[183] Ibid., 41. They note that for Heidegger the question of being comes before knowing.
[184] Ibid., 41.
[185] Ibid., 43.

world.[186] Reflection often causes embodied intelligence to breakdown. If human beings have embodied intelligence, then they have the capacity to be in a situation in meaningful ways and have mind-body unity.[187]

An understanding of the context within which individuals exists relates to knowledge and understanding, reflection, rationality, knowledge of the self and its connection to personhood.[188]

Blustein discusses the self from the perspective of self-knowledge, and the role that care and relationships play in it. Both disinterested and self-regarding care are important sources of self-knowledge. The good of care partly consists of the affording of opportunities for greater self-understanding.[189] Self-knowledge and caring are connected because disinterested and self-regarding concerns can be either peripheral or deep-seated. The mutual monitoring within intimate relationships is perhaps the most potent source of objectivity for people. Because people are more likely to obtain a truer picture of themselves from intimates than elsewhere, intimacy plays an important role in maintaining and fostering personal integrity, according to Blustein.[190] Care, relationships and intimacy are important in gaining an understanding and knowledge of the self.

Another key to understanding persons may relate to their rational and moral capacities.

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[186] Ibid., 41.

[187] Ibid., 43. Benner and Wrubel argue embodied intelligence has been neglected because of the prevalence of Cartesian mind-body dualism, the nature of cultural heritage and embodied intelligence itself. From the time of Plato, skilled activity has been devalued and intellectual, reflective activity has been more highly valued. Yet, this skilled body may be essential for the application of "higher levels" of human intelligence.

[188] Campbell, *Moderated Love*, 90-4. He identifies particularity, mutuality and incompleteness as three essential features in the knowledge of persons within professional caring. See p. 49.

[189] Blustein, *Care and Commitment*, 54-5. He argues disinterested care, when it gives a more detached and diminished view of the self, promotes self-knowledge. Disinterested care can still benefit the carer as it is an antidote to self-preoccupation because it shifts the attention away from the self to the world. Likewise, self-regarding care can free one from inordinate self-preoccupation and promote self knowledge, as striving toward personal goals can increase insight into one's capacities.

Capacities: Rational and Moral

In contrast to a phenomenological, non-reflective view of persons,[191] Downie and Telfer focus on the rational capacities of the individual. Although they support respect for persons, that respect seems to lie, for them, in the particular value of human beings centring upon two capacities. The first is self-determination, which involves adopting ends and formulating policies of action to achieve them. The second is forming and pursuing ideal values, which includes the capacity for morality.[192]

In contrast, for Noddings, rationality does not necessarily mark the initial impulse or action undertaken in caring, but reason can be used to enhance caring by figuring out a course of action after one has committed oneself to do something.[193] For Noddings, rational capacities are used to pursue and achieve ends, but may not have a significant role in forming them.

Downie and Telfer recognise potential difficulties with placing great value on individual's rational capacities. By isolating the properties of distinctive human value, the stress on individuality which prompted it is undermined. What is valued is not only the capacity for self-determination and forming ideal values, but the capacity for choice and commitment, which protects the individual. This exercise of choice is vital.[194] Choice may be linked to freedom or liberty, which Downie and Telfer define as the right to be allowed to act as one chooses. They claim liberty includes the duty not to do something and to refrain from preventing another from doing what he

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[190] Ibid., 55-6. Yet, intimates also are likely offer a biased or more subjective picture of a person than non-intimates who may be able to offer an objective description of the person. See also pp. 54-5.
[191] See pp. 60-2. Benner and Wrubel, *The Primacy of Caring*, 41-50.
[192] Downie and Telfer, *Caring and Curing*, 38-9. They note the capacity for morality was the essence of uniquely human value, for Kant.
[193] Noddings, *Caring*, 35-6.

chooses. Yet, they also recognise no one has the unlimited right, or liberty, to do as he chooses.[195] Downie and Telfer note the importance and limits of liberty, choice and self-determination, or autonomy.[196] Furthermore, these capacities are linked to rationality.

Downie and Telfer recognise a further difficulty with emphasising rational capacities. Not all human beings possess these specific capacities. In response, Downie and Telfer distinguish between "normal" and "sub-normal" human beings. The former are referred to as "persons", and worthy of full-respect, while the latter are worthy of some respect, but not due all the respect of "normal adults".[197] This distinction allegedly allows the authors to maintain that the "distinctive endowment" of a human being is central to respect for individuals, while acknowledging not all human beings possess this endowment. Regarding rights of human beings, if Downie and Telfer set an ultimate value on the individual's exercise of certain attributes characteristic of a persons, then they acknowledge, "we have to respect the life without which the exercise cannot take place."[198]

Blustein continues the exploration of what is distinct and valued in a person, noting in Kantian ethics human beings have dignity and are ends in themselves and all people have this "unconditional and incomparable worth" regardless of their moral

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[194] Ibid., 39.

[195] Ibid., 51. They cite J. S. Mill, *On Liberty*, ed. M. Warnock, (London: Collins, 1962), 187. Mill puts forth a qualification for interfering in liberty, that of self-protection. He states that a person's liberty could be limited if he could be shown to be limiting to another's liberty.

Furthermore, to make choices people must have knowledge and information. Downie and Telfer stress the right to know the truth within the caring professions and social services, and claim the caring worker has a duty to tell clients the truth rather than withhold the truth in order to avoid complicated explanation and potential distress (60-5).

[196] For further discussion of autonomy see pp. 95, 130.

[197] Downie and Telfer, *Caring and Curing*, 40-1. The authors include infants, the severely mentally ill, senile and those in terminal coma, as examples of sub-normal human beings, not persons.

[198] Ibid., 41.

character or actions.[199] For Kant, things are replaceable, persons are not. Persons have dignity because of their capacity for impartially principled conduct and their irreplaceability is grounded in the dignity of humanity.[200] Kant described dignity as

> ...that which constitutes the condition under which alone something can be an end in itself does not have mere relative worth, i.e., a price, but an intrinsic worth, i.e., dignity.[201]

As dignity is related to a person's value, Kant believed that individuals should

> Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.[202]

So, for Kant, being treated as an end and not only a means is linked to individuals' dignity, intrinsic value and worth.[203]

This Kantian concept of person involves not manipulating another for one's own ends, according to Blustein. The concept of "person" is a moral one. Each person is not only as valuable as every other, but a unique individual and, therefore, uniquely valuable in himself/herself.[204] Blustein claims it is morally significant that persons are the particular persons they are and have intrinsic and unique value in being such.[205] Personhood includes a moral element, as individuals are intrinsically, uniquely and equally valued.

Related to the intrinsic worth of persons, are the roles they have in a society or community. Downie and Telfer argue against physical and psychological determinism in their view of humanity.[206] They analyse the nature of human action

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[199] Blustein, *Care and Commitment*, 205-7. He cites Kant Immanuel, *Foundations of the Metaphysics of Morals*, trans. Lewis White Beck, (Indianapolis: Bobbs-Merrill, 1959).
[200] Ibid., 210. He cites Kant, *Foundations of the Metaphysics of Morals*, 46.
[201] Kant, *Foundations of the Metaphysics of Morals*, 60.
[202] Ibid., 54. Also Paton, *The Moral Law*, 32.
[203] See pp. 213-15.
[204] Blustein, *Care and Commitment*, p. 214-15.
[205] Ibid., 215. Blustein does not endorse a "uniqueness view" where we treat people only in respect of their uniqueness and there are no universal principles for morally appropriate actions (215-16).
[206] Downie and Telfer, *Caring and Curing*, 127-32. Physical determinism is the view that decisions have physical determinant in the brain and the occurrence of physical events is both a necessary and sufficient condition for the occurrence of a decision. It can explain only the occurrence of events but

and choice,[207] and implications of social roles in understanding persons.[208] Social roles are one aspect of persons, which aids a more complete understanding of persons and a particular context within which they function.[209]

Regarding personhood the role of context, culture and background, a phenomenological view, and the importance of rational and moral capacities have been examined. Morality involves concrete and abstract elements, which parallel an ethic of care and ethic of justice.

Care and Justice

After analysing the nature, content and implications of the ethics of care, exploring its relationship to the ethics of justice also is necessary. There are different ways of viewing this relationship including that they are separate and incompatible or different but compatible.

As discussed, Gilligan analyses an ethic of care and an ethic of justice as two distinct spheres of moral development.[210] It could be inferred from her description of both ethics that they are incompatible. Yet, she recognises the possibility of and need for integrating these two approaches,[211] providing a useful basis for examining further the relationship between care and justice.

Noddings also notes two approaches to morality. A 'traditional' approach begins with moral judgment and reasoning and gives public and tangible statements

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not of actions, and no theory of events is adequate as a theory of action. Psychological determinism states that actions are events open to causal explanations, but that it is misleading to claim that causes of human action compel events to happen. In this view, choice is a result of a person's desires and the believed consequences of them. It equals processed desires. Downie and Telfer counter psychological determinism arguing people can make choices which go against their desires, primarily through an expression of the will.

[207] Ibid., 126-7, 132-3.

[208] Ibid., 135-9.

[209] See p. 207.

[210] See chapter 1.

[211] Gilligan, *DV*, 100.

that describe people's thinking regarding moral matters. This approach is too formal, mathematical and problematic for three reasons: people miss sharing the heuristic process in ethical thinking; this approach supposes ethics must be cast in the language of principle and demonstration; and it presents only the justification for people's acts and not what motivates them.[212]

In the alternative caring approach to morality, women place themselves in concrete situations, assume personal responsibility for choices and define themselves in terms of caring.[213] This approach requires a process of concretisation, which Noddings advocates, not abstraction. It arises out of the experience of women, just as the traditional logical approach arises out of men's experience. The former does not exclude men, but it is characteristically and essentially feminine, according to Noddings.[214]

In contrast to viewing the ethics of care and justice as separate and potentially incompatible, Blustein argues the traditional dichotomy between them is an implausible position.[215] An ethic of care is not appealing by itself, because the devotion and loyalty associated with care are only virtues provided they do not encourage morally wrong actions.[216] Blustein argues care must be subject to "moral constraints" regarding the amount of energy and attention people devote to beneficiaries of their concerns and constraints on the caring itself.[217]

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[212] Noddings, *Caring*, 7-8. She is unclear exactly what is meant by 'traditional'.
[213] Ibid., 8. Noddings notes Gilligan's work in relation to this point.
[214] Ibid., 8.
[215] Blustein, *Care and Commitment*, 7.
[216] Ibid., 7. He gives the example that loyalty that puts the welfare of those close to us before all else and blinds us to the legitimate needs and interests of others is not a virtue. Cf. Noddings, *Caring*, 46-7. She seems to accept and support impartiality toward family and intimates.
[217] Ibid., 7.

For Blustein, care and justice are not competitors, but belong to different parts of morality.[218] A "care orientation" focuses on ingredients and conditions for the good life, on personal love, commitment to the good of particular others, the formation and maintenance of self-identity and concern for one's integrity.[219] A "justice orientation" focuses on rights, duties and obligations.[220] Blustein claims since morality consists both of a theory of the good and right, "neither care nor justice can stand alone as a comprehensive theory of morality."[221]

In investigating 'traditional' and alternative approaches to morality, the tension between and possible integration of the ethics of care and justice has been highlighted. Before this relationship and the ethics of justice are investigated further, the ethics of care must be analysed critically.

Critique of the Ethics of Care

Critical analysis of the ethics of care initially is mainly negative. This involves brief exploration of definitions, assumptions, descriptive and prescriptive shifts, contradictions, tensions and implications regarding care. Then a more substantive, primarily positive critique, focuses on key themes for an amalgam of the ethics of care and justice.

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[218] Ibid., 7. He cites Owen Flanagan and Jonathon Alder, "Impartiality and Particularity," Social Research 50 (1983) : 576-96 and Nunner-Winkler, "Two Moralities? A Critical Discussion of an Ethic of Care and Responsibility versus an Ethic of Rights an Justice," in *Morality, Moral Behaviour, and Moral Development*, eds. W. Kurtines and J. Gewitz, (New York: John Wiley and Sons, 1984), 348-61.

[219] Ibid., 7. These include the commitment to the good of particular others, formation and maintenance of self-identity and a concern for one's integrity.

[220] Ibid., 7-8.

[221] Ibid., 8. Although Blustein acknowledges the need for both care and justice within morality, he does not provide an account of how they might be integrated. For further discussion of such an amalgam, see chapter 5.

Definitions

The critique will focus on key definitional issues, the description and content of care.

Definitions of love, compassion and needs are problematic. Campbell's descriptions of professional and "moderated" love are ambiguous.[222] The content of compassion, whether it is primarily cognitive or emotive and the omission of empathy and sympathy, are confusing.[223] Different types of compassion can support meeting needs. The parameters of Downie and Telfer's descriptions of "absolute", in contrast to "relative", needs is unclear.[224] The former can be described as basic, or minimum level, needs which are required for people to survive. The latter can be linked to maximum level needs which positively benefit human beings. The distinction between minimum and maximum levels of need is useful in assessing the means and priority of meeting them.[225] Meeting needs may involve both the caring professional and patient.

There is little clarity in the definitions of reciprocity, mutuality, engrossment and commitment. The general question of whether Noddings can require reciprocity is important because of its implications for a view of care and relationships. It seems difficult to insist that someone in a persistent vegetative state or an elderly demented person be reciprocal in order to validate a relationship as one of caring. Yet, Noddings seems unaware of the difficulties her view presents.[226]

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[222] Campbell, *Moderated Love*, 11-12, 84-6. See pp. 35-7.
[223] Downie and Telfer, *Caring and Curing*, 90. Blustein, *Care and Commitment*, 146. See p. 45.
[224] Downie and Telfer, *Caring and Curing*, 28-9. See p. 46.
[225] See pp. 226-9.
[226] Noddings, Caring, pp. 69-74. See pp. 48-9. For further discussion of the role of reciprocity and mutuality, see pp. 220-2.

More specifically, whether reciprocity is sustainable and addresses the balance of needs,[227] and whether mutuality primarily focuses on obtaining knowledge, are highly debatable.[228] Within reciprocity, Noddings' distinction between empathetic and sympathetic engrossment may be implicit, but is not made sufficiently explicit.[229] Furthermore, Blustein's discussion of and the relationship between commitments and integrity are vague.[230] Yet, some form of reciprocity, mutuality, commitment and integrity seems important in formulating an amalgam of the ethics of care and justice.[231]

Part of the confusion regarding the content of care relates to its ideal and non-ideal situations. For instance, Noddings' description of the ethical ideal[232] and Downie and Telfer's statement of the philanthropic ideal[233] lack sufficient clarity in their content and implications.[234] In a less than ideal situation, Noddings recognises there may be 'proper refusal' in caring, namely when the caring relationship is not yet established. Differentiating between this hypothetical imperative and a categorical imperative to care is somewhat unclear.[235] Furthermore, Noddings' meaning of "appropriate" and "inappropriate" modes in caring are potentially useful, but vague, and so are problematic.[236] Blustein's advocacy of "moral constraints" on and description of wrong actions in care lack sufficient content. So identifying and avoiding the dangers within non-ideal situations of care is difficult.[237] The recognition of different levels within caring, both ideal and non-ideal, and their

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[227] Campbell, *Moderated Love*, 206-7. Noddings, *Caring*, 68-74. See pp. 48-9.
[228] Ibid., 91-3. See p. 49.
[229] Noddings, *Caring*, 35. See p. 51.
[230] Blustein, *Care and Commitment*, 49-51, 147. See pp. 54-5.
[231] See pp. 220-2.
[232] Noddings, *Caring*, 49-51, 104, 120-4. See pp. 41-3.
[233] Downie and Telfer, *Caring and Curing*, 12. See p. 47.
[234] See pp. 75-6.
[235] Noddings, Caring, 86. See p. 56.
[236] Ibid., 33-5. See p. 51.
[237] Blustein, *Care and Commitment*, 7. See pp. 67-8.

appropriateness or inappropriateness, may be important in highlighting minimum and maximum standards in caring and for amalgamating care and justice.[238]

Underlying definitions and descriptions of the content of care are assumptions about its theory and practice.

Assumptions

Critical examination focuses on assumptions about the nature of care and views of humanity.

Regarding the nature of care there are dangers with its emotional and subjective bases and emphasis. For instance, Noddings assumes caring is non-rational[239] and relies on natural caring and sympathy based on people experiencing "caring and tender moments".[240] These assumptions are problematic because caring feelings and emotions do not necessarily arise naturally for all people, and all people have not had positive caring backgrounds from which to draw. Furthermore, these assumptions support an optimistic view of persons.[241]

An optimistic view of humanity harbours difficulties. For example, Noddings' requirement of attributing "the best possible motive" in care,[242] and assumption that people will make a commitment to others in caring are dangerous.[243] Campbell's use of transcendent language and hope in caring is problematic in its support of an idealistic view of caring professionals.[244] Such optimism is unrealistic given human motives are not always of the highest moral standard, as persons often are more concerned with their best interests than others'. Furthermore, an optimistic

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[238] See p. 78.
[239] Noddings, *Caring*, 61. See p. 40.
[240] Ibid., 27-8, 104. See p. 42.
[241] See p. 80.
[242] Noddings, *Caring*, 123-4. See pp. 42-3.
[243] Ibid., 104, 120. See p. 54.

perspective assumes individuals will not harm people, leaving individuals vulnerable to others' good will, decisions and actions. One means of protecting people in society is through a more realistic view of human nature which includes safeguards, or maintaining minimum standards.[245]

Assumptions also relate to descriptions and prescriptions in theories of care.

Descriptive versus Prescriptive

Difficulties within care can stem from shifts from the descriptive to the prescriptive in theory or practice. For instance both Campbell, addressing professional and personal love,[246] and Downie and Telfer, regarding values,[247] are unclear whether the nature of their theories is realistic or idealistic, descriptive or prescriptive.

The same confusion is true of Noddings' naturalistic and universalistic view of care.[248] She is in danger of committing the naturalistic fallacy, of moving from 'is' to 'ought' in her description of the nature of care and humanity. Furthermore, naturalists may assume that what exists in nature, what 'is', is good. Regarding naturalism more generally, Charles Pidgen notes moral conclusions cannot be derived from non-moral premises. Values cannot be derived from facts.[249] Noddings is in danger of sliding

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[244] Campbell, *Moderated Love*, 70, 85-6. See pp. 35-7.
[245] See chapter 5.
[246] Campbell, *Moderated Love*, 85. See pp. 35-7.
[247] Downie and Telfer, *Caring and Curing*, 10. See pp. 37-9.
[248] Noddings, *Caring*, 27-8. See p. 41.
[249] Charles R. Pidgen, "Naturalism," in *A Companion to Ethics*, ed. Peter Singer, (Oxford: Blackwell, 1996), 421-2. See also R. M. Hare, *Moral Thinking*, (Oxford: Oxford University Press, 1981), chapter 4. W. D. Hudson, *The Is-Ought Question: A Collection of Papers on the Central Problems in Moral Philosophy*, (London: MacMillan, 1969). G. E. Moore, *Principia Ethica*, (Cambridge: Cambridge University Press, 1903). G. E. M. Anscombe, "Modern Moral Philosophy," in *The Collected Philosophical Papers of G. E. M. Anscombe*, vol. 3, ed. G. E. M. Anscombe, (Oxford: Basil Blackwell, 1981), 31. In contrast, it can be argued that the naturalistic fallacy is not a fallacy. See Charles Taylor, *Sources of the Self: Making of the Modern Identity*, (Cambridge: Cambridge University Press, 1989).

from a description of care and morality to a prescription without sufficient recognition of this shift or its implications.

Assumptions in and about caring are potentially dangerous if they and their implications for people and situations are unacknowledged. Assumptions also relate to underlying tensions in care.

Tensions in the Ethics of Care

Tensions arise between the ethics of care and justice, as well as personal and professional, subjective and objective, emotional and rational elements.

There is general tension between the ethics of care and the ethics of justice. It arises between the concrete and relational and abstract and principled, 'female' and 'male', approaches to moral decision-making.[250] Tension also is found within elements of care itself. For example, between specific relatedness and abstract reflection,[251] the actual and ideal self[252] and concrete and abstract coping strategies in caring.[253]

Tension also exists between personal and professional relationships, particularly regarding love, care and limits.[254] These may relate to the tension between emotional and rational elements in care. This is located, for example, in views of the nature of care[255] and persons,[256] and types of engrossment.[257]

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[250] Noddings, *Caring*, 7-8. Gilligan, *DV*, 18-19, 73. Blustein, *Care and Commitment*, 7-8. See pp. 66-8.
[251] Noddings, *Caring*, 83. See pp. 56-7.
[252] Noddings, *Caring*, 49. See p. 42.
[253] Benner and Wrubel, *The Primacy of Caring*, 3. See p. 43.
[254] See pp. 35-7, 37-9, 55-9.
[255] Noddings, *Caring*, 61. See p. 40.
[256] Benner and Wrubel, *The Primacy of Caring*, 41-50. Downie and Telfer, *Caring and Curing*, 38-41. See p. 62.
[257] Noddings, *Caring*, 33-5. See p. 51.

These different tensions point to the tension between the subjective and objective, which relates to values,[258] types of care,[259] needs,[260] elements of relationships.[261] More abstractly, subjectivity and objectivity point to difficulties within philosophical theories, including a phenomenological view, relativism and naturalism.

A phenomenological view of persons emphasises individual interpretation of the self and experience.[262] Thus it is subjective. As this view is subjective, individuals' interpretations of themselves and their experiences will be disparate and are likely to conflict. This creates tension between persons and their accounts of reality, with no objective means of assessing their validity or deciding between them. As phenomenology provides no objective truth or moral standards, it easily degenerates into relativism.

Regarding relativism, Noddings claims her ethic of caring is not "situation ethics" or relativistic.[263] On one level she rejects absolute principles or rules and universalisability as guides for ethical behaviour.[264] On another level, Noddings claims the maintenance of the caring relationship is apparently a universal component of the ethical ideal.[265] Noddings claims "certain feelings, attitudes and memories" in caring are expected of all people.[266] Noddings' position is confusing.

Discussion of Noddings' theory raises a more general critique of the ethics of care. This ethic claims to reject universalisable principles as being too abstract and removed from the particularities of situations, persons and relationships. One danger

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[258] Blustein, *Care and Commitment*, 42-4. Downie and Telfer, *Caring and Curing*, 8. See pp. 37-9.
[259] Ibid., 146-7. See pp. 39-40.
[260] Downie and Telfer, *Caring and Curing*, 29. See p. 46.
[261] Ibid., 85, 87-8, 90-2. See pp. 57-8.
[262] Benner and Wrubel, *The Primacy of Caring*, 41-50. See pp. 61-2.
[263] Noddings, *Caring*, 5, 28, 85. See pp. 56-7.
[264] Ibid., 5, 84-5. See pp. 41, 56.
[265] Ibid., 85. See p. 57.
[266] Ibid., 27-8. See p. 41.

is it simply substitutes a particular type or narrow aspect of care for such principles. Thus, some picture or requirements of care serve as the universalisable principles by which people are to live and interact. If this is true of the ethics of care, then it harbours a fundamental dishonesty about its nature and content. Furthermore, it fails to recognise the positive contribution principles make in morality and possible benefits of an integration with the ethics of justice.[267]

In morality, tensions arise between the ethics of care and the ethics of justice and within care itself. The latter includes tensions between personal and professional, emotional and rational elements of relationships and their limits. The ethics of care also highlights a tension between subjective and objective accounts of persons and situations. If care provides no objective universalisable guides for moral decisions it is relativistic and misses a crucial opportunity to provide either a genuine alternative to or amalgam with the ethics of justice.[268]

These general and specific tensions also highlight some implications related to the ethics of care.

Implications

Critical discussion of some implications of the ethics of care will focus on theoretical and practical elements.

There are difficulties regarding the nature of ideals and models of care within theories of caring. Noddings fails to recognise the implications of her reliance on subjective ideals.[269] If ideals are subjective then each individual could hold different ideals without any necessary common universal threads. If the nature of each individual being is utterly unique, then shared, common ideals might not exist. Such

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[267] See chapter 5.

subjectivity provides no means of objectively assessing the nature, content or implications of ideals. It also offers no way of deciding between conflicting ideals either in theory or practice. In contrast, ideals could have some objective, universal base, independent from particular, subjective views. Both objective and subjective ideals may be expressed in theory and practice.

Two models of caring in practice are covenant and contract. Campbell advocates the former, claiming it is characterised by an attitude of spontaneous giving.[270] Yet, he does not acknowledge the underlying optimistic, and idealistic, view of persons. Nor does he acknowledge the dangers of expecting people to behave positively toward others.[271]

Within professional caring, the implications and role of responsibility is vital. Yet, Mayeroff and Tschudin fail to address the abuse of responsibility.[272] Thus, they ignore the need to protect people, particularly patients within professional settings, from such abuse or exploitation.[273]

One key element in the theory and practice of caring is prioritisation. Blustein fails to recognise the implications of his claims about and to provide content or guidelines for prioritising or monitoring time and energy in caring.[274] Furthermore, the appropriateness or inappropriateness of expending time and energy may depend on the nature of the caring relationship, whether professional or personal, or degree of need.[275]

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[268] See chapter 5.
[269] Noddings, *Caring*, 6. See pp. 41-2.
[270] Campbell, *Moderated Love*, 102. See pp. 58-9.
[271] See pp. 71-2.
[272] Mayeroff, "On Caring," 472. Tschudin, *Caring in Nursing*, 74-5. See pp. 52-3.
[273] See pp. 230-7.
[274] Blustein, *Care and Commitment*, 7. See pp. 67-8.
[275] See pp. 223-9.

After critically analysing definitions, assumptions, tensions and implications within the ethics of care, key themes for an integration between care and justice must be examined more carefully.

Critique of the Ethics of Care from a Middle Way Perspective

After exploring general critiques of the ethics of care, which are mostly negative, more specific positive critique will be offered from a middle way perspective. Further critical analysis of key themes will focus on the necessity and potential means of conflict resolution and prioritisation in care, which relates to needs and responsibilities, particularly minimum standards, and elements of personhood.

Conflict, Prioritisation and Minimum Standards

Although there is some recognition of conflict in the ethics of care, there is a significant lack of attention given to its content and potential resolution. Tschudin and Gustafson and Laney recognise the potential for conflicting responsibilities, while Noddings and Downie and Telfer address conflict only briefly.[276] Within theoretical and practical caring, a model of addressing conflict is vital if the ethics of care are to offer a viable alternative to the ethics of justice. Justice can offer abstract objective means of prioritisation, but is not always sensitive to particular persons and relationships. A caring approach which incorporated acknowledgement of relationships without being too biased or subjective would be useful. Gustafson and Laney come the closest to offering a means of prioritising conflicting responsibilities, as they stress the need to reflect on to whom and for what a person is responsible.[277] Yet, this description is vague and does not necessarily provide an adequate means of

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[276] Noddings, *Caring*, 55-7. Downie and Telfer, *Caring and Curing*, 10. See p. 52-3.

resolving conflict, either in specific situations or as general rules. A more sufficient approach to conflict resolution and prioritisation would draw on elements from both the ethics of care and justice. This might entail recognising the importance of specific, concrete aspects of a situation, or context, as well as abstract rules and principles.[278]

One means of approaching conflict and difficulties in prioritisation may involve differentiating minimum from maximum needs and standards. The necessity of minimum standards is highlighted within the ethics of care. Meeting the minimum needs necessary could have a higher priority than maximum needs and standards. As part of a nurse's minimum professional responsibility, she must ensure a patient receives food, warmth and comfort. These basic, or minimum, needs must be met before the maximum needs, such as curing the patient, can be usefully addressed.

Downie and Telfer helpfully distinguish between "absolute" and "relative", minimum and maximum, needs,[279] but do not apply this distinction to meeting needs within the philanthropic ideal.[280] This ideal implies that just because a demand or need is made on society, it should be met. The dilemma of competing needs and demands is difficult, and a means of prioritising and meeting them may be vital. One descriptivist approach to human needs is propounded by Abraham Maslow. He argues there is a hierarchy of human needs beginning with the physiological, then building up to safety, esteem, and, finally reaching a summit of, self-actualisation needs. Lower level needs must be fulfilled before moving on to the next level.[281] The distinction between human needs which are necessary for survival, e.g. basic needs,

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[277] Gustafson and Laney, *On Being Responsible*, 4-8. See pp. 52-3.
[278] See chapter 5.
[279] Downie and Telfer, *Caring and Curing*, 29. See p. 46.
[280] Ibid., 12. See p. 47.
[281] See Jack Lyttle, *Mental Disorder: Its Care and Treatment*, (London: Bailliere Tindall, 1986), 134-5 for a description of Maslow's hierarchy.

and those which contribute to flourishing, or minimum and maximum standards, seems vital in any society attempting to assess, prioritise and meet needs and demands.[282] Care theories need to develop such a means of prioritisation.

Approaches to meeting needs also may involve notions of equality or equity.[283] Both may be important in addressing needs and treatment of others, as equality provides a level of consistency, while equity allows for justified differences. Yet, Downie and Telfer fail to provide sufficient content to the "morally appropriate reasons" which justify equity.[284] This absence could allow discrimination under the guise of equity, if other standards of protection are not provided. A clearer definition of both equity and equality may be needed to safeguard the vulnerable and prevent harm.[285] Addressing some form of needs is one aspect of relating to persons.

Meeting needs and prioritisation is connected to responsibilities in care.[286] For example, Blustein and Noddings both recognise the importance of responsibility within care and distinguish between some form of positive and negative caring.[287] Positive caring involves benefiting or enhancing the other, which is linked to his/her welfare.[288] It also may include restraining harm and protecting him/her.[289] In contrast, negative caring destroys or diminishes the other.[290] Furthermore, Tschudin recognises duties, rights and responsibilities can be positive, involving care, or negative, involving non-maleficence.[291] She also links individual and collective duties and rights to principles of justice and fairness.[292] The distinction between

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[282] See pp. 226-9.
[283] Downie and Telfer, *Caring and Curing*, 76-7. See pp. 46-7.
[284] Ibid., 100. See p. 47.
[285] See pp. 230-7.
[286] See Gustafson and Laney, *On Being Responsible*, 4-8. See pp. 52-3.
[287] Blustein, *Care and Commitment*, 27, 28-9. Noddings, *Caring*, 9. See pp. 39-40.
[288] Ibid., 28. See p. 39.
[289] Ibid., 28. Noddings, *Caring*, 9. See pp. 39.
[290] Ibid., 28-9. See p. 39.
[291] Tschudin, *Ethics in Nursing*, 74-7. See pp. 52-3.
[292] Ibid., 77-8. See pp. 52-3.

positive and negative care, responsibilities and duties may be useful in identifying minimum and maximum responsibilities and needs and in relating to persons.[293]

Persons

Critical analyses of personhood within caring reveal underlying idealistic and optimistic views and tension between rational and emotional aspects of people, which emphasise the importance of holism and the need for minimum standards.

Noddings' reliance on subjective standards and ideals in caring supports an optimistic and idealistic perspective of human nature.[294] Her view assumes feelings of care and sympathy toward others will arise naturally.[295] She does recognise such feelings may not be sustained[296] and reciprocity and 'natural affection' may breakdown in caring.[297] Yet, her advocacy of 'magnanimous receptivity'[298] and her assumption that people will make commitments to act in caring[299] are highly optimistic and unrealistic.

In contrast, reality may not support an optimistic and idealistic view of persons, as individuals can choose to put their needs, wants and desires before those of others. People can exploit and abuse others. Noddings' optimistic view of persons does not provide any safeguards for harm in relationships. Protection against such instances may involve minimum standards below which treatment of others is not to fall, whether personally or professionally.[300]

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[293] See pp. 223-5.
[294] See pp. 70-1.
[295] Noddings, *Caring*, 27-8, 104, 120, 123-4.
[296] Ibid., 16. See p. 54.
[297] Ibid., 74-5. See p. 50.
[298] Ibid., 76-7. See p. 50.
[299] Ibid., 16. See p. 54.
[300] See chapter 5.

Regarding persons, Benner and Wrubel advocate a phenomenological view,[301] but do not explore sufficiently its implications. One danger of upholding embodied intelligence and de-emphasising reflection is of creating a tiered view of personhood, where non-reflective, non-rational elements are superior to reflective and rational ones. This imbalanced view of persons is to be avoided. A more balanced view of persons recognises the importance of both reflective and non-reflective, rational and intuitive, types of knowledge and being. This more holistic perspective of persons is to be encouraged.[302]

Within holism, both reason and emotion have a role within caring. Although for Noddings the fundamental nature of care is non-rational, she recognises rationality does have a role to play, although secondary.[303] Similarly, Blustein claims caring is emotional, but people can alter specific carings 'by choice'.[304] Furthermore, Campbell advocates a balance between reason and emotion, which provides consistency and protection in professional caring.[305] So emotional and rational elements of persons are important within care.

Downie and Telfer emphasise individuals' rational capacities, i.e. self-determination and choice regarding values.[306] Yet, there are difficulties with over-emphasis on the capacities of persons, as not all individuals will possess them. These "less capable" persons may be vulnerable in a given context, community or society. Downie and Telfer acknowledge this danger, and try to distinguish between attitudes to "persons" and other human beings, and emphasis respect for all human life.[307] Yet, this distinction between fully-fledged "persons" and other human beings allows some

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[301] Benner and Wrubel, *The Primacy of Caring*, 41-50. See pp. 61-2.
[302] See pp. 215-17.
[303] Noddings, *Caring*, 35-6, 61. See p. 40.
[304] Blustein, *Care and Commitment*, 65. See p. 43.
[305] Campbell, *Moderated Love*, 84-5. See pp. 36-7.
[306] Downie and Telfer, *Caring and Curing*, 38-9. See pp. 62-3.

individuals to be judged as more complete or valuable than others. This creates a two-tiered hierarchy, leaving some at risk of being seen as dispensable and undervalued. This hierarchy undermines care and contradicts justice. It contradicts our instinct as persons and training as caring professionals. Downie and Telfer's problematic and dangerous arguments leave people vulnerable to having their worth judged by possession or exhibition of capacities.

In contrast, Blustein argues each person is as valuable as every other and that value lies in himself/herself. This is based on a Kantian view of persons which upholds their intrinsic worth and dignity, regardless of moral character or the possession of certain capacities.[308] This perspective may serve as a safeguard for all people, particularly the vulnerable, as it recognises the intrinsic value of all human beings. It is vital to a holistic view of persons.[309]

Blustein accurately recognises the need to love the whole person. He also stresses particularity and irreplaceability within personal love.[310] One danger of particularistic love or care is that it focuses too much on specific qualities and characteristics of the loved one, and the person as a whole becomes secondary. A nurse might care for a patient because of his liveliness and vivacity. These qualities might be an integral part of his personality, but may alter if he becomes depressed. The patient could become apathetic and disengaged or difficult and demanding. The nurse's particularistic care will not survive if it is primarily focused on specific qualities and characteristics. A more productive approach involves a stronger emphasis on holistic care or love first, with attention to a person's particular qualities

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[307] Ibid., 40-1.
[308] Blustein, *Care and Commitment*, 205-8. See pp. 64-5.
[309] See pp. 215-17.
[310] Blustein, *Care and Commitment*, 191-3. See pp. 44-5.

and characteristics. This would encourage a balance between holism and particularity.[311]

Part of a holistic approach to persons also might entail an understanding of the context within which they exist and function. Benner and Wrubel, Hesselgrave and Rommen and Shorter accurately highlight the import of context in relation to people.[312] Context can be linked to background,[313] culture[314] and personal history.[315]

Investigation of potential middle way themes has addressed the role of conflict resolution, prioritisation of needs and responsibilities, minimum and maximum standards, equality, equity, and a holistic notion of persons which includes their context.

Conclusion

As there was no single, overall crucial theorist from which notions of care were gleaned, in exploring and analysing the ethics of care, a variety of theories, as well as the nature and practice, of care and caring have been critiqued. Dangers of the ethics of care include being too naturalistic, relativistic, subjective and optimistic regarding human nature. It also does not provide a sufficient means of resolving conflict in caring.[316] Evaluating the ethics of care has highlighted the need for prioritisation of needs and responsibilities, which may be accomplished through differentiating between minimum and maximum standards. Furthermore, a holistic view of persons is vital to a balanced understanding of and interaction with them.

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[311] See pp. 215-17.
[312] Benner and Wrubel, *The Primacy of Caring*, 40-1. Hesselgrave and Rommen, *Contextualisation*, 166. Shorter, *Evangelisation and Culture*, 30. See pp. 60-1. The vital role of context, and its elements, in understanding people will be developed further in the thesis. See especially pp. 203-8.
[313] Ibid., 45-6. See pp. 60-1.
[314] Ibid., 27-8, 45-6. Hesselgrave and Rommen, *Contextualisation*, 28. Shorter, *Evangelisation and Culture*, 30. See pp. 60-1.
[315] Ibid., 27-8. See pp. 60-1.

Crucial to a holistic view of humanity and persons are the notions of rationality, rational capacities, integrity and dignity, while recognising the intrinsic worth and value of individuals.[317] As persons exist and function in specific situations, the importance of context involves their background, history and culture.[318] Relating to persons involves reciprocity, mutuality and commitment. It also entails responsibilities and needs, both of which may be fulfilled to a maximum or minimum degree. Maximum standards benefit persons, while minimum standards enable them to function and survive. One aspect of these minimums may include the notions of equality and equity, which are linked to justice.[319] These themes show the need for an investigation and critique of the ethics of justice to parallel that done in this section on the ethics of care.

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[316] See pp. 68-77.
[317] The theme of a holistic approach to persons is highlighted in chapter 4 and further developed in chapter 5.
[318] The role of context is emphasised in chapter 4.
[319] Minimum and maximum responsibilities and different views of meeting needs will be explored in greater depth in chapters 3 and 5.

Chapter Three: John Rawls' Theory of Justice

Introduction

The limits of Gilligan's ethic of care and understanding of an ethic of justice have been explored critically. Both theoretical and practical aspects and ideas of care also have been analysed. The role of context and a holistic view of persons, as well as the importance of differentiating minimum and maximum standards, responsibilities and needs were emphasised.[1] An examination of the ethics of justice is necessary to explore its role within morality. It may operate primarily as a minimum standard to protect against the potential subjectivism, relativism and optimism of the ethics of care. The ethics of justice will be investigated through offering separate and parallel descriptive and critical sections, an analysis of key terms from both, and exploring themes for an amalgam with the ethics of care. An original critique of the ethics of justice will be offered, particularly highlighting the importance of positive and negative responsibilities and duties within morality.

The number of political and moral theorists who address issues of justice include Robert Nozick, Brian Barry, Michael Sandel and Will Kymlicka.[2] However, for most commentators, the crucial authors are John Rawls[3] and Alasdair MacIntyre.[4] Their views on justice have been highly influential in the twentieth century and no discussion of justice would be complete without them. Before investigating MacIntyre's notion of justice, Rawls' example of the abstract, rule-based theories of

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[1]See chapters 1 and 2.
[2] Robert Nozick, *Anarchy, State and Utopia*, (New York: Basic Books, 1974). Brian Barry, *The Liberal Theory of Justice: A critical examination of the principle doctrines in 'A Theory of Justice' by John Rawls*, (Oxford: Clarendon Press, 1973). Michael Sandel, *Liberalism and the Limits of Justice*, (Cambridge: Cambridge University Press, 1982). Will Kymlicka, ed., *Justice and Political Philosophy*, (Brookfield: Edward Elgar Publishers, 1992).
[3] John Rawls, *A Theory of Justice*, (Cambridge: Belknap Press of Harvard University Press, 1971).
[4] MacIntyre, *AV*. Alasdair MacIntyre, *Whose Justice? Which Rationality?*, (Notre Dame: University of Notre Dame Press, 1988). See also Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy and Tradition*, (Notre Dame: Notre Dame University Press, 1990).

justice against which Gilligan and care theorists argue will be examined.[5] This includes Rawls' two principles of justice, the original position, social contract, theory of justice, personhood and moral theory.

The Two Principles

Throughout *A Theory of Justice*, Rawls argues for the acceptance of "the two principles" for just institutions.[6] They are the basis of his theory and are to govern the basic structure of society.[7] He claims they would be chosen by free, rational and self-interested persons in an initial situation of equality as defining the fundamental terms of their agreement.[8] The first principle states

> Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.[9]

While the second principle is that

> Social and economic inequalities are to be arranged so they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.[10]

Regarding the importance of each principle, Rawls' first priority rule states the two principles are to be lexically ordered. Liberty can be restricted only for the sake of liberty.[11] A less extensive liberty must strengthen the total system of liberty shared by all. A less than equal liberty must be acceptable to those with lesser liberty.[12] So Rawls notes the importance of liberty, while recognising some limits.

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[5] See pp. 9-12, 66-7.
[6] Rawls, *TJ*, chapter 2.
[7] Ibid., 7-11. For Rawls, this basic structure is the primary subject of justice and focuses on how the major social, political and economic institutions distribute duties, rights and advantages in society.
[8] Ibid., 11. See pp. 91-3.
[9] Ibid., 302.
[10] Ibid., 302.
[11] Ibid., 302. Rawls describes the lexical ordering of the two principles is the long-run tendency of the general conception of justice consistently pursued under reasonably favourable conditions (542).
[12] Ibid., 302.

Rawls' second priority rule is that the second principle of justice is lexically prior to the principles of efficiency and maximising the sum of advantages. Furthermore, fair opportunity is prior to "the difference principle".[13] Rawls states, in general, all social primary goods are to be distributed equally unless unequal distribution is to the greatest advantage of the least favoured.[14] Natural distribution is itself neither just nor unjust. What is just or unjust is the way institutions deal with it.[15] The difference principle protects the interests of all individuals, especially the least advantaged, regarding distribution of goods in society.

Regarding distribution in society, particularly of goods,[16] advantages[17] and natural endowments[18] Rawls' advocates the difference principle.[19] As it seeks to ensure equal benefit and gain for all parties in society, regarding primary goods, it expresses mutuality and reciprocity.[20] It is connected to the principles of fraternity, which entails people not wanting to have greater advantages unless they benefit the less well-off,[21] and redress, which focuses on compensation for "undeserved inequalities".[22] So the difference principle expresses a level of mutuality and reciprocity in society.

In relation to the difference principle, Rawls proposes the "maximum minimorum". The "maximin" directs attention to the worst that can happen under any

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[13] Ibid., 302-3.
[14] Ibid., 303. In applying the difference principle Rawls notes one type of case where the expectations of the least advantaged are maximised, and no changes in the expectations of the better off can improve the situation of the worst off. Rawls refers to this as a "perfectly just scheme". The second case is where the expectations of the better off contribute to the welfare of the more unfortunate. Rawls states the maximum is not achieved, and although this scheme is just throughout, it is not the best just arrangement (75, 78-9).
[15] Ibid., 102.
[16] Ibid., 303.
[17] Ibid., 75.
[18] Ibid., 100, 102-4.
[19] Ibid., 75-8.
[20] Ibid., 102-3.
[21] Ibid., 105.
[22] Ibid., 100-2. These include inequalities from birth and natural endowment.

proposed course of action. People are to decide in light of that situation.[23] Rawls argues the "maximin" is connected to the two principles of justice, as parties in the original position would choose them if trying to protect themselves against the worst eventualities.[24]

Rawls' two principles are the basis for a just society. They ensure a minimum standard of distribution and protection for the least advantaged in society, through the difference principle. After noting their general purpose, the focus of Rawls' first principle is examined.[25]

Liberty

Rawls' first principle is liberty. It even has priority over equality. A person is free or not free from a constraint to do or not do something. Liberty can always be explained by the agents who are free, the restrictions and limitations they are free from, and the content of freedom. Liberty, in relation to constitutional and legal restrictions, is a certain structure of institutions and system of public rules defining rights and duties.[26]

The importance of liberty is represented by the complete system of the liberties of equal citizenship and is the same for all.[27] In contrast, the worth of liberty is proportional to a person or group's capacity to advance their ends within the

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[23] Ibid., 154. He notes the objection that since we are to maximise the long-term prospects of the least advantaged, it seems the justice of large increases or decreases in the expectations of the more advantaged may depend on small changes in the prospects of the worst off. He responds that the conditions of the two principles ensure that the disparities likely to result will be much less than the differences tolerated in the past (157-8).

[24] Ibid., 152-3.

[25] Minimum standards and protection will be crucial to developing an amalgam of justice and care. See pp. 230-7.

[26] Ibid., 202.

[27] Ibid., 542. Rawls notes that within the framework for the priority of liberty, areas on conflict include liberty of conscience, paternalism and toleration (205-21).

defined framework of the system and is not the same for all.[28] For Rawls, basic liberties must be assessed as a whole. Liberty is unequal when one class of people has greater liberty than another or liberty is less extensive than it should be. These restraints do not affect liberty itself, but the worth of liberty.[29] Thus, there is a distinction between the importance of liberty in general and its worth or value to particular individuals.

From Rawls' liberal individualistic view, liberty is the most important principle in society and for institutions. Yet, even freedom has limits. Posterior to the principle ensuring equal liberties, Rawls stresses the importance of equality.

Equality

The second principle of equality deals with the description, content, levels and implications for a well-ordered society and social union.

Rawls explores three interpretations of equality - natural liberty, liberal equality, and democratic equality.[30] As natural liberty[31] and liberal equality[32] allow distributive shares to be improperly influenced by morally arbitrary factors, i.e. income, wealth and natural assets,[33] Rawls proposes democratic equality as an alternative.[34] In it, the social order is not to establish and secure the more attractive prospects of those better off unless it is to the advantage of the less fortunate.[35]

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[28] Ibid., 204. He defines the worth of liberty as the value to individuals of the rights the first principles of justice define.
[29] Ibid., 203-4. Furthermore, the inability to take advantage of one's rights and opportunities because of poverty, ignorance, or a lack of means can be a constraint definitive of liberty.
[30] Ibid., 65.
[31] Ibid., 66-72. It incorporates the principle of efficiency, which states a configuration is efficient when it is impossible to change it to make some people better off without making others worse off.
[32] Ibid., 73-4.
[33] Ibid., 72-4.
[34] Ibid., 75-83. It involves the difference principle. See p. 87.
[35] Ibid., 75

For Rawls, because people are "chain-connected" and their expectations are "close-knit", as "it is impossible to raise or lower the expectation of any representative man without raising or lowering the expectation of every other representative man, especially the least advantaged."[36] Rawls argues fundamental equality is based on mutual respect and owed to individuals as moral persons.[37]

For institutions and people, equality involves justice as regularity. This entails consistent interpretation and impartial application of rules.[38] It also includes the application of equality to the structure of institutions, and deals with moral persons who are owed the guarantees of justice.[39] For Rawls, equality is vital as it contributes to just institutions, as a primary component of the basic structure, and provides a necessary level of fairness and consistency for all individuals in society.

Rawls recognises one difficulty with equality is that it cannot rest on natural attributes. There is no natural feature which all humans have to the same degree.[40] He responds that the doctrine of equality is a procedural principle that assumes treating people alike. Essential equality is that of consideration. Furthermore, departures from equal treatment must be defended and judged impartially by the same system of principles.[41] For Rawls, the procedural principle of equality ensures people are treated consistently and justly.[42]

Rawls emphasises the simplicity of the contract view as the basis of equality, because a minimum capacity for a sense of justice ensures equal rights.[43] One advantage of this approach is that by giving justice to those who can give it in return,

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[36] Ibid., 80.
[37] Ibid., 511.
[38] Ibid., 504. This form of equality also involves the administration of institutions as public systems of rules.
[39] Ibid., 504-5. See pp. 104-5.
[40] Ibid., 507.
[41] Ibid., 507.
[42] This procedural equality of Rawlsian justice can be one feature of the ethics of justice which counters some of the weaknesses of the ethics of care, particularly its potential relativism and partiality.

the principle of reciprocity is fulfilled at its highest level. Rawls argues equality of distribution and that of respect can be reconciled more fully. The latter is fundamental, defined by the first principle and owed to people irrespective of their social position, according to Rawls.[44]

In arguing for his two principles of justice, Rawls advocates the importance of maximising liberty while recognising its limits and the need to ensure equal treatment of individuals in a just society. He also opposes the inequalities of natural distribution[45] and argues for justice as equality, regularity and consistency. His two principles of justice incorporate a minimum level of distribution, protection and reciprocity in society. They arise, for Rawls, through the original position.

Original Position

What is known as the "original position" is the starting point in developing Rawls' theory of justice.[46] In his hypothetical choice situation,[47] the two principles of justice are chosen unanimously.[48] Derived from them are frameworks for conduct in society, the social contract, relationships and moral development and choices, all of which uphold his conception of justice.[49]

Rawls argues that although there are many possible interpretations of the initial situation,[50] the "most favoured" interpretation is referred to as the "original position".[51] In it, Rawls assumes there is a broad level of agreement that "principles

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[43] See pp. 97, 104-5.
[44] Rawls, *TJ*, 510-11.
[45] Rawls views differences in the natural distribution of talents and abilities as insufficient criteria for deserving or meriting a greater portion of resources distributed. See Rawls, *TJ*, pp. 12, 14-15.
[46] Rawls, *TJ*, chapter 3, especially pp. 118-22.
[47] Ibid., 12.
[48] Ibid., 122-3, 139.
[49] Ibid., 11, 13, 302-3.
[50] Ibid., 121.
[51] Ibid., 121.

of justice should be chosen under certain conditions".[52] In the original position, all are equal. All have the same rights in the procedure for choosing principles.[53] Eventually, people will find a description of the initial situation which expresses reasonable conditions and principles which coincide with their "considered judgments".[54] This state is "reflective equilibrium".[55] It reflects consistency and balance between principles of justice.

The aim of the original position is to provide a fair procedure which ensures any principles agreed to will be just. To achieve this, Rawls assumes parties are behind the "veil of ignorance".[56] Rawls claims the veil ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or contingency of social circumstances.[57] Within the veil, Rawls stipulates that parties have limited knowledge about themselves. They do know general facts about human society and that it is subject to the circumstances of justice.[58] Rawls' restrictions on knowledge within the veil of ignorance attempt to counter self-interest and promote justice.

Rawls recognises objections to his idea of the veil of ignorance. The meaning of the original position is difficult to grasp, because of the restricted knowledge and

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[52] Ibid., 18. The specific elements of the initial situation are the nature of the parties, subject of justice, presentation of alternatives, time of entry, circumstances of justice, formal conditions on the principles, knowledge and beliefs, motivation of the parties, rationality, the agreement and compliance conditions and the point of no agreement (146-7).

[53] Ibid., 19.

[54] Ibid., 20.

[55] Ibid., 20. Rawls claims the need for "reflective equilibrium" arises when a person's idea of justice is challenged and he must either change the idea or sense of justice, or maintain confidence in his original idea (48).

[56] Ibid., 136.

[57] Ibid., 12. It can be argued that the point of the veil of ignorance is for people to agree which disadvantages they are willing to accept once the veil is lifted.

[58] Ibid., 137. Rawls identifies these general facts as political and economic theory, laws of human psychology and the basis for social organisation. Individuals do *not* know their place in society, social status or class, fortune in the distribution of natural assets and abilities, conceptions of the good, particulars of their rational plan of life, any special propensities, or the particular circumstances of their society.

information.[59] Furthermore, the veil is irrational, as principles should be chosen with all available knowledge.[60] Rawls' responds that with a hypothetical idea the restrictions must ensure the same principles are chosen always. The veil of ignorance is key in meeting this requirement, as it ensures the information available is always the same and relevant.[61] These restrictions on information are of fundamental importance because without them people would not be able to work out any definite theory of justice. There would be no unanimous choice of principles,[62] and people would seek their own advantage.[63] The veil provides a necessary level of consistency in the choice of principles for society.

Rawls argues that his two principles would and should be chosen to formulate a just society. To ensure they are selected by individuals, he proposes the original position and the veil of ignorance. The veil attempts to contain self-interest and counters natural advantages. After investigating the content of Rawls' original position it is important to explore its form in society.

Social Contract Theory

Rawls claims the guiding idea of a social contract is that principles of justice for the basic structure of society are the object of the original agreement. He claims

> They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles regulate all further agreements; they specify the kinds of

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[59] Ibid., 138.
[60] Ibid., 139.
[61] Ibid., 138-9.
[62] Ibid., 140.
[63] Ibid., 139. He also lists three misunderstandings about the initial situation to be avoided. The parties are theoretically defined individuals, which is not to be confused with how well humans can assume this role in regulating their practical reasoning. Second is the misunderstanding that justice as fairness is an egoistic theory, since people are assumed to take not interest in another's interests. Third, if parties are conceived as making proposals themselves, they have no incentive to suggest pointless or arbitrary principles be used, because no one can predict if or when such principle will be to their advantage (147-9).

> social co-operation and forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness.[64]

Like some other contract views, Rawls' consists of agreed principles, an interpretation of the initial situation and the problem of choice of principles posed there.[65]

Rawls explains the basic structure for the choice of his two principles of justice as that of the social contract. He relates this structure to justice as fairness and social interactions.

Society and Social Union

Rawls assumes that in a social union and well-ordered society parties are guided in the choice of a conception of justice by knowledge of the general facts about society.[66] A well-ordered society is a form of social union.[67] Furthermore, people have choices and are not indoctrinated or inculcated with a sense of justice. This sense does not equal compulsive psychological mechanisms to ensure compliance.[68] The essential and characteristic features of a well-ordered society are a shared final end and accepted ways of advancing it which allow for the public recognition of the attainments of everyone.[69] When the shared final end is achieved, all people find satisfaction in a common aim. This affirms the tie of community.[70]

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[64] Ibid., 11. See p. 98.
[65] Ibid., 15. Rawls qualifies his idea of the social contract claiming a person can accept one part and not the others. Furthermore, the contractarian idea can be extended to the choice of an entire ethical system which includes principles for all the virtues (17). See chapter 4.
[66] Ibid., 547.
[67] Ibid., 527. The idea of social union may be contrasted with private society, where the individuals or associations have their own private ends which are either competing or independent, but not complementary (520-2).
[68] Ibid., 513-15.
[69] Ibid., 526-7.
[70] Ibid., 526. Rawls notes the common aim is often profound and complex.

Rawls argues that a well-ordered society affirms the autonomy of persons and encourages the objectivity of their considered judgments of justice.[71] Autonomy and objectivity are compatible with a contract view, as there is no antimony between freedom and reason. Acting autonomously is acting from those principles consented to as free and equal rational beings. These principles are objective, those we want all people to follow, and not made from a personal slant or judgments. Thus our moral principles and convictions are objective too, for Rawls.[72] Moral principles relate to goods in society.

The chief primary goods at the disposition of society are rights, liberties, opportunities, powers, income and wealth. They are things a rational man wants regardless of whatever else he wants.[73] Primary goods can be accounted for by the "thin theory of the good", namely a conception of goodness as rationality, general facts about human wants, abilities, phases, and requirements of nurture, the Aristotelian Principle, and the necessities of social interdependence.[74]

Rawls notes difficulties regarding how primary goods are to be weighed. Expectations should not be an index of primary goods, but satisfactions to be expected when plans use these goods. In contrast, justice as fairness views expectations as the index of primary goods which a representative man can anticipate. The "publicly recognised objective measure" is to compare men's situations solely by reference to things of which they all prefer more.[75] So primary goods are linked to expectations and provide an objective standard.

The social contract provides the framework for Rawls' theory of justice.

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[71] Ibid., 520.
[72] Ibid., 516-17.
[73] Ibid., 62, 92, 303.
[74] Ibid., 434. For further discussion of the Aristotelian Principle and 'thin theory of the good', see pp. 105-6, 106-7.
[75] Ibid., 93-5.

Theory of Justice

Rawls' theory of justice includes a sense of justice, justice as fairness, the context or circumstances of justice, its justifications, limitations and the alternative of a utilitarian framework.

Description

For Rawls, principles of justice for the basic structure of society are the object of the original agreement.[76] Justice provides the principles needed to decide between various social advantages and for underwriting an agreement on proper distributive shares.[77]

> All social values - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any, or all, of these is to everyone's advantage.[78]

In contrast, injustice is when inequalities exist that are not beneficial to all.[79]

In general, Rawls theory of justice sets out principles governing people's moral powers and their sense of justice.[80] Rawls argues the "intuitive idea" is to separate the theory of justice into two parts.[81] The first, or ideal, part assumes strict compliance and works out principles that characterise a well-ordered society under favourable circumstances. This is Rawls' main focus. The non-ideal theory, which focuses on principles for meeting injustice, is worked out after the ideal has been

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[76] Ibid., 11. These principles are those that free, rational and self-interested people would accept from a position of equality as defining the fundamental terms of their association, and they regulate all further agreements. See p. 86.
[77] Ibid., 126.
[78] Ibid., 62.
[79] Ibid., 62.
[80] Ibid., 50-1.
[81] Ibid., 245.

chosen.[82] Thus the ideal and non-ideal levels of Rawls' theory may correspond to preventative and corrective justice.

Rawls' theory of justice is linked to a sense of justice.

Sense of Justice

For Rawls, people have a capacity for and a sense of justice.[83] A sense of justice is an effective desire to apply and to act from the principles and point of view of justice.[84] It is public knowledge that parties in the original position are capable of this sense. This condition guarantees the integrity of the original agreement in society. The capacity for a sense of justice ensures that the principles chosen will be respected.[85]

Respect for these principles is linked to Rawls' claim that justice is congruent with goodness.[86] For those in a well-ordered society, the rationality of affirming their sense of justice as regulative of their life plan and that being guided by the justice perspective accords with an individual's good must be established.[87] Rawls assumes human actions come from existing desires. As people cannot change their system of ends immediately, they must decide in advance whether to affirm their sense of justice.[88]

A sense of justice is vital to Rawls' theory, as is the application of justice as fairness in society.

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[82] Ibid., 245-6.
[83] Ibid., 145. See p. 104.
[84] Ibid., 567.
[85] Ibid., 145. Rawls states this assumption also helps guarantee strict compliance.
[86] Ibid., 567-77. Rawls states that whether these two points of view are congruent is likely to be a crucial factor in determining the stability of a sense of justice and well-ordered society. He argues for this congruence by claiming the contract doctrine requires the principles of justice are public, that participating in the life of a well-ordered society is a great good and acting justly is something people want to do as free and equal rational beings.
[87] Ibid., 567.
[88] Ibid., 568-9.

Justice as Fairness

In justice as fairness Rawls argues the mutual disinterest of the parties is a key feature.[89] Justice as fairness is the principle of justice chosen by free, rational, self-interested and equal persons to define the terms of their association and regulate all further agreements.[90] Furthermore, "the force of justice as fairness" arises from the requirement that all inequalities be justified to, and to the greatest benefit of, the least advantaged and the priority of liberty.[91]

Rawls emphasises the importance of individual rationality and autonomy with regard to moral principles, particularly justice.[92] For Rawls, a Kantian interpretation of justice as fairness is based on autonomy.[93] For Kant, moral principles are the object of rational choice. These principles define moral law and govern ethical conduct. Kant believed this moral legislation is agreed under conditions that characterise men as free and equal rational beings. According to Rawls, the original position is an expression of this conception.[94] Rawls' principles of justice are categorical imperatives in the Kantian sense.[95]

Justice as fairness is chosen by individuals and applied to their interactions in society. It also is related to the circumstances of justice.

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[89] Ibid., 12-3.
[90] Ibid., 11. See pp. 93-4.
[91] Ibid., 250. See p. 86.
[92] Ibid., 251-2.
[93] Ibid., 251. Rawls claims it is a mistake to over-emphasise the place of generality and universality in Kantian ethics.
[94] Ibid., 251-2.
[95] Ibid., 253. See Kant, *Foundations of the Metaphysics of Morals*, 36, 44. Paton, *The Moral Law*, 25-9. Rawls notes his views of a person's choice as a noumenal self as a collective one and assumption that the parties in the original position know they are subject to the conditions of human life are departures from a Kantian perspective (256-7).

Circumstances of Justice: Context

Rawls states the aim of addressing the circumstances of justice is to articulate the relations between individuals which give rise to questions of justice.[96] Society is a co-operative venture for mutual advantage marked by the conflict and identity of interests. Principles are needed for the determining of and agreement on the distribution of advantages in society. The "circumstances of justice" are the background conditions which give rise to these necessities,[97] and the normal conditions under which human co-operation is possible and necessary.[98] These circumstances obtain when people put forward conflicting claims on the division of social advantages under conditions of moderate scarcity.[99] Thus the circumstances of justice explain the context and background of the need for principles of justice, particularly regarding distribution of advantages in society.[100]

A theory of justice and its principles have a context, part of which entails justification.

Rawls' Justification

In supporting his view, Rawls states the theory of justice includes the essentials of the theoretical structure, an examination of the types of institutions justice enjoins, duties and obligations it imposes on individuals, and an investigation of the feasibility of justice as fairness. The theory of justice is intended to compose a unified whole.[101]

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[96] Ibid., 130.
[97] Ibid., 126.
[98] Ibid., 126.
[99] Ibid., 128. These circumstances can be objective or subjective (126-7).
[100] Context and background will be further explored in a Middle Way Model, pp. 203-8.
[101] Rawls, *TJ*, 579-80.

Regarding the two principles, Rawls argues that first principles are central elements and devices of theory, but

> ...justification rests upon the entire conception and how it fits in with and organises our considered judgments in reflective equilibrium.... justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view.[102]

While Rawls offers regulative comments regarding the justification of his theory, he also recognises some of its weaknesses.

Limitations Recognised by Rawls

Rawls acknowledges the limitations of his theory.[103] Rawls notes that critics argue his principles of justice are not derived from a notion of respect for persons based on the recognition of their inherent worth and dignity. Because the original position does not include this idea explicitly, justice as fairness may be unsound.[104] Rawls responds by saying,

> I believe, however, that while the principles of justice will be effective only if men have a sense of justice and do therefore respect each other, the notion of respect or of the inherent worth of persons is not a suitable base for arriving at these principles....Once the conception of justice is on hand, however, the ideas of respect and of human dignity can be given a more definite meaning.[105]

So in defending his theory, Rawls regards a conception of justice as more fundamental regarding human beings than a notion of respect for persons or their intrinsic worth and dignity.[106]

In describing his theory of justice, Rawls argues for the necessity of a sense of justice and the importance of justice as fairness. He recognises a Kantian view of the

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[102] Ibid., 579. See p. 212.
[103] Ibid., 583-6. Elsewhere he notes that his theory of justice leaves aside many aspects of morality and an account of right treatment of animals and nature. He states that a "conception of justice is but one part of a moral view" (512).
[104] Ibid., 585-6.
[105] Ibid., 586.

worth of persons, but argues a conception of justice is more fundamental. An alternative view of justice is found in utilitarianism.

Utilitarianism

Rawls defines utilitarianism as the view that "the principle of utility is the correct principle for society's public conception of justice".[107] It is the moral theory for which his theory of justice is to be an alternative.[108] Utilitarianism does not regard persons as ends in themselves, as the principle of utility might require some people to forgo greater life prospects for the sake of others.[109] Furthermore, utilitarianism may entail the sacrifice of some people's aims, ends and self-esteem for the good of others.[110]

Rawls distinguishes between average utilitarianism, which directs society to maximise the average, not the total, utility,[111] and classical utilitarianism, which requires that institutions be arranged to maximise the absolute weighted sum of the expectations of the relevant representative man.[112] Rawls ranks average above classical utility.[113] The concept of the "impartial sympathetic spectator" clarifies the intuitive base of the classical version.[114] In classical utilitarianism a principle of rational choice for one man is taken as a principle for social choice too.[115] Rawls argues classical utilitarianism mistakes impersonality for impartiality. In contrast,

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[106] See Kant, *Foundations of the Metaphysics of Morals*, 54, 60-1. See pp. 213-15.
[107] Rawls, *TJ*, 182.
[108] Ibid., 22.
[109] Ibid., 180-1. See Kant, *Foundations of the Metaphysics of Morals*, 54. Rawls recognises this sacrifice is not always necessary, but claims it often is the case within utilitarianism.
[110] Ibid., 180-1.
[111] Ibid., 162.
[112] Ibid., 161. Rawls notes the average principle is based on the ethics of a single rational individual prepared to take whatever chances are necessary to maximise his prospects from the standpoint of the initial situation (167).
[113] Ibid., 184. Although he notes the classical form has been the most important historically.

justice as fairness offers judgment where the impartial person judges according to principles from the original position without bias or prejudice.[116] So, justice as fairness offers a source of objective judgement.[117]

In Rawls' theory, justice as fairness, a sense of justice, the circumstances or context for justice, individual rationality and autonomy, principles, justification and dangers within utility and utilitarianism have been investigated. Underlying and affecting any theory of justice for a society is a view of persons and humanity.

Personhood

Personhood for Rawls includes rationality, autonomy, choice, forming rational life plans and ends, moral dimensions, being good and the capacities for a sense of justice and moral personality.

Rationality

Regarding the content of rationality, Rawls assumes persons, within the original position, are rational and trying to advance their own interests.[118] Rawls' notion of rationality is primarily the standard view from social theory.[119] He states

> Thus in the usual way, a rational person is thought to have a coherent set of preferences between the options open to him. He ranks these options according to how well they further his purposes; he follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed.[120]

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[114] Ibid., 184. This idea is that something is right when an ideally rational and impartial spectator would approve of it from a general point of view, should he possess all relevant knowledge of the circumstances.
[115] Ibid., 188.
[116] Ibid., 190.
[117] It is interesting to note that both Rawls and utilitarianism seem more focused on ensuring objectivity and impartiality than the ethics of care.
[118] Ibid., 11, 142, 144. See p. 93.
[119] Ibid., 143. Feminist theorists have been critical of Rawls' version of rationality. For example, see Susan Moller Okin, "Reason and Feeling in Thinking about Justice," Ethics 99 (1989) : 229-49.
[120] Ibid., 143.

Rawls departs from standard social theory in assuming a rational person does not suffer from envy.[121] He assumes rationality is mutually disinterested, as parties in the original position seek principles which advance their ends, but do not impose benefits or injuries on one another.[122]

For Rawls, a person's plan of life is rational if and only if it is consistent with principles of rational choice applied to all relevant features of his situation and is chosen with deliberate rationality, i.e. full awareness of the facts and consequences.[123] Because a rational plan of life establishes the point of view from which all value judgements for a particular person are to be made and eventually rendered consistent, it is fundamental to a definition of the good.[124] Thus, a rational plan of life is crucial within morality.

Rational life plans can be short or long-term in aim.[125] A person's aims and interests are rational if and only if, they are to be encouraged and provided for by his rational plan.[126] Rawls acknowledges that people may reach a point where they must choose between incomparable aims or ends and argues rationality is needed in choosing between them.[127]

For Rawls, rationality is a key aspect of persons in the original position. He recognises individuals are generally self-interested, but argues rationality is mutually disinterested. A rational plan of life provides an important means of making and assessing value judgments and deciding between conflicting aims and ends.

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[121] Ibid., 143-4. In response to the objection that a conception of justice cannot ignore the fact that men are afflicted with such feelings, Rawls argues "the conception eliminates the conditions which give rise to disruptive attitudes." Rawls also claims envy makes everyone worse off and is collectively disadvantageous.
[122] Ibid., 144.
[123] Ibid., 408. This requirement seems to contradict Rawls' restrictions on knowledge identified in the original position.
[124] Ibid., 409.
[125] Ibid., 409-16.
[126] Ibid., 408-9.
[127] Ibid., 551-3.

Moral Persons

Rawls states

> Moral persons are distinguished by two features: first they are capable of having (and are assumed to have) a conception of their good...and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, *at least to a certain minimum degree.*[128]

As the large majority of people possess a sense of justice, the question of necessity does not pose a serious practical problem.[129] There is "no recognised race or group of human beings who lack this attribute" and if an individual does lack the potential for moral personality, it is considered a defect.[130] While individuals have varying capacities for a sense of justice, this is not a reason to deprive those with lesser capacities of the full protection of justice.[131] Rawls states

> It is sometimes thought that basic rights and liberties should vary with capacity, but justice as fairness denies this: *provided the minimum for moral personality is satisfied, a person is owed all the guarantees of justice.*[132]

The capacity for moral personality is a sufficient, but not stringent, condition for being entitled to equal justice *and* liberty.[133] So, a sense of justice is required to fulfil the minimum standard for being a moral person and entitled to the full protection of justice.[134]

For Rawls, a "good person", or a "person of moral worth", has a higher degree than the average of the "broadly based features of moral character" it is rational for

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[128] Ibid., 505. Emphases added.
[129] Ibid., 505-6.
[130] Ibid., 506. Rawls acknowledges there are scattered individuals who lack this capacity, or its realisation to the minimum degree, but claims this is the consequence of unjust or impoverished social circumstances, or fortuitous contingencies. It could be argued that Rawls is making a naturalistic claim for justice which can be paralleled to Noddings' naturalistic claim for care. See pp. 71-3.
[131] Ibid., 506.
[132] Ibid., 506-7. Emphases added.
[133] Ibid., 505-6.

persons in the original position to want in each other.[135] He believes there are properties it is rational to want in persons when viewed with respect to almost any social roles. These include the fundamental moral virtues and a sense of justice.[136]

Rawls supports a view of persons as free, autonomous beings[137] and treating men not as means only but as ends in themselves.[138] Within this view, self-respect, or self-esteem, is important.[139] The conditions for persons respecting themselves and others requires that their common plans be rational and complementary.[140]

Rawls assumes people have a social nature[141] and being a member of some community is a condition of human life.[142] Within human community members enjoy one another's excellences and individuality, recognise the good of each as an element in the complete activity and the whole scheme is consented to and gives pleasure to all.[143]

People's choices relate to their motivation for action, which Rawls connects to the Aristotelian Principle. It states

> ...other things equal, human beings enjoy the exercise of their realised capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realised, or the greater its complexity.[144]

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[134] The themes of a minimum standard and justice as protection will be vital to the development of the thesis. See chapter 5, especially pp. 230-7.
[135] Rawls, *TJ*, 437. He notes the difficulty of identifying the point of view from which these properties are rationally preferred and the assumptions upon which this preference is founded.
[136] Ibid., 434-6. He defines these virtues as "the strong and naturally effective desires to act on the basic principles of right".
[137] Ibid., 251-7. He relies on Kant's ideas regarding individuals. See Kant, *Foundations of the Metaphysics of Morals*, 54.
[138] Ibid., 179-80. He claims this notion is found in and achieved by the two principles of justice.
[139] Ibid., 440. Rawls states self-respect is the most important primary good.
[140] Ibid., 441.
[141] Ibid., 522-3. See pp. 93-5.
[142] Ibid., 438. See p. 94. *TJ*, pp. 520-9.
[143] Ibid., 523.
[144] Ibid., 426. Rawls claims this principle is not stated explicitly, but is implied in Aristotle's thoughts and statements about the relations between happiness, activity, and enjoyment. See *Nichomachean Ethics*, VII, 11-14 and X, 1-5.
Furthermore, Rawls claims the intuitive idea is that human beings take more pleasure in doing something as they become more proficient at it and prefer activities which call on a larger repertoire of more intricate discriminations.

So the Aristotelian Principle contributes to an understanding of our motivations, desires and preferences within morality.[145]

Rawls' notion of persons includes the capacity for a sense of justice as a minimum standard for receiving equal liberty and justice and protection within a society. He notes the importance of being moral and good persons, the moral worth of human beings, their autonomy and social nature.[146] Morality of persons also relates to a broader notion of moral theory.

Moral Theory

Rawls' moral theory involves fundamental notions of the right and good, the role of moral capacities, judgments, attitudes and virtues. Morality implies duties and obligations, to, for and from persons and societies.

The Right and the Good

For Rawls,

> ...a conception of the right is a set of principles, general in form and universal in application, that is to be publicly recognised as a final court of appeal for ordering the conflicting claims of moral persons.[147]

These conditions are "constraints" on the conception of right which reflect the restrictions from within the original position.[148] Rawls uses "right" to mean "rightness as fairness", or an "ideal contractarian concept of right".[149]

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[145] Ibid., 426-7.
[146] See pp. 208-23 for a further discussion of these crucial themes in developing an amalgam of the ethics of care and justice.
[147] Ibid., 135.
[148] Ibid., 130-5. Rawls claims these restraints hold not only for the choice of principles of justice, but for all ethical principles.
[149] Ibid., 111. He notes this is not the usual or 'normal' moral sense of 'right'.

Within justice as fairness the concept of right is prior to that of the good.[150] In general, a person's good is determined by what is for him the most rational long-term plan of life given reasonably favourable circumstances. The good is the satisfaction of rational desire.[151] Rawls describes "thin" and "full" theories of the good. The former includes the bare essentials necessary to argue for the principles of justice,[152] while the latter views the principles of justice as secured and uses them in defining the other moral concepts related to goodness.[153] The full theory includes a notion of judgment and fittingness.[154] Thus, these theories point to minimum and maximum standards within morality.

Morality

Rawls describes the development of morality in three stages.[155] First it involves the morality of authority, where Rawls assumes the sense of justice is acquired gradually by younger members of society as they grow up.[156] The morality of association is provided by the "moral standards appropriate to the individual's role in the various associations to which he belongs".[157] These standards may include "common sense rules of morality", "the adjustments necessary to fit them to a person's particular position"[158] and rely on ideals regarding roles and positions.[159] Finally, the morality of principles involves the process by which a person becomes attached to highest order principles, namely acting justly and advancing just

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[150] Ibid., 396.
[151] Ibid., 92-3. See p. 103.
[152] Ibid., 396-7. See p. 95.
[153] Ibid., 398.
[154] Ibid., 434.
[155] Ibid., 462-79. Cf. Gilligan's notion of moral development in chapter 1.
[156] Ibid., 462, 465-6.
[157] Ibid., 467.
[158] Ibid., 467. These rules or standards are impressed upon a person by the approval or disapproval of those in authority and other members of the group. The family is viewed as a small association, normally characterised by a definite hierarchy where each person has certain rights and duties.

institutions.[160] So principles, roles, appropriateness and fittingness are important within morality.[161]

Moral theory also involves judgments and moral capacities.[162] A key moral capacity is developing a sense of justice, which is "acquired as a skill in judging things to be just and unjust, and in supporting these judgments by reasons."[163] Rawls assumes the person making a "considered judgment" has the ability, opportunity, and desire to reach a correct decision.[164]

Underlying moral judgments are feelings and attitudes, which may be moral or natural.[165] For Rawls, moral sentiments are more complex than natural attitudes because in their complete form they presuppose an understanding and acceptance of certain principles and an ability to judge accordingly.[166]

Moral virtues are sentiments and habitual attitudes leading people to act on certain principles of right,[167] like natural and moral shame,[168] regret[169] and guilt.[170] The fundamental moral virtues are part of the "broadly based properties" rational

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[159] Ibid., 468.
[160] Ibid., 472. Rawls notes that by principles he means first order principles such as those considered in the original position.
[161] See chapter 5.
[162] Rawls, *TJ*, 46-7.
[163] Ibid., 46. See pp. 97, 106-7. Rawls recognises that this moral capacity is extremely complex.
[164] Ibid., 47-8.
[165] Ibid., 479-81.
[166] Ibid., 486-7.
[167] Ibid., 437. See also Rawls' earlier, but less concise, description of the virtues (192). For further discussion of virtues, see pp. 160-5, 190-2.
[168] Ibid., 442-5. He defines shame as the feeling a person has when he experiences an injury to his self-respect or self-esteem. Natural shame arises from this type of injury to self-esteem due to a person not having or failing to exercise certain excellences. Moral shame arises from failing to achieve some good and, therefore, feeling unworthy of others.
[169] Ibid., 442. Rawls describes regret as the feeling aroused by the loss or absence of what we think is good for us.
[170] Ibid., 442, 445-6. For Rawls guilt focuses on the infringement of the just claims of others and the injury we have done to them and their resentment or indignation should they discover our deed. Moral guilt arises from acting contrary to one's sense of right and justice.

persons want in each other,[171] linked to moral sentiments and attitudes and vital to a person's capacity for morality.[172]

Regarding morality, Rawls argues that no one deserves his place in the distribution of natural assets any more than his initial starting place in society.[173] Rawls recognises common sense often supports distribution according to moral desert.[174] Justice as fairness rejects this idea because it would not be chosen in the original position.[175] Furthermore, Rawls states

> A just scheme, then, answers to what men are entitled to; it satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent upon their intrinsic worth. The principles of justice that regulate the basic structure and specify the duties and obligations of individuals do not mention moral desert, and there is no tendency for distributive shares to correspond to it.[176]

So Rawls argues against distribution according to desert and notes that entitlement may not do justice to the intrinsic worth of persons.[177]

Morality involves moral judgments, capacities, feelings, attitudes and virtues. There are dangers with basing the moral worth of persons and distribution on desert or entitlement. Morality also entails duties and obligations.

Duties and Obligations

Rawls identifies positive duties to do something good and negative duties not to do something bad.[178] Natural duties apply to people regardless of their voluntary acts, have no necessary connection with institutions or social practices, their content is

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[171] Ibid., 436-7.
[172] Ibid., 437.
[173] Ibid., 104, 311. See pp. 86-8 for a discussion of this point in relation to the difference principle.
[174] Ibid., 310. This distribution pertains to income, wealth and the good things in life generally.
[175] Ibid., 310-11.
[176] Ibid., 311.
[177] Ibid., 310-11. For a further discussion of desert and entitlement see pp. 213-14, 233.
[178] Ibid., 114.

not defined by the rules of these arrangements, and they obtain between all as equally moral persons.[179] Justice as fairness is incomplete without principles of natural duties.[180] They would be chosen in the original position because they are "an essential part of a conception of right".[181] Natural duties include justice,[182] mutual respect[183] and mutual aid.[184]

Obligations arise as a result of voluntary acts, their content is always defined by an institution or practice whose rules specify what one is to do.[185] For Rawls, the primary obligation, not gaining from the efforts of others without doing our fair share, is based on the principle of fairness.[186] So Rawls emphasises the importance of fairness, mutual benefit and some form of reciprocity within obligations and social co-operation.[187]

The role of positive, negative and natural duties has been explored.

Obligations entail fairness, mutuality and reciprocity, particularly within a society.

Conclusion

In advocating the choice of his two principles for a just society, Rawls' theory of justice highlights themes without which no moral framework is complete. These

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[179] Ibid., 114-15.
[180] Ibid., 333-4. Rawls notes from the standpoint of the theory of justice, "the most important natural duty" is to support and further just institutions. It requires people to support and comply with just institutions, when they exist and apply to them. People are to assist in the establishment of just arrangements when they do not exist and this can be done without too much cost to themselves (115).
[181] Ibid., 333.
[182] Ibid., 115. Justice is a fundamental natural duty within justice as fairness.
[183] Ibid., 337-8.
[184] Ibid., 337-9. Rawls cites Immanuel Kant, *The Foundations of the Metaphysics of Morals*, Academy edition, vol. 4, 423. Immanuel Kant, *The Metaphysics of Morals*, vol. 6, part II, section 30, 451f.. Alternatively, Rawls does not support this duty from self-interest, but claims its primary value is the confidence and trust we can have in men's good intentions and the knowledge they are there to help if we need them. A sufficient ground for accepting this duty is its pervasive effect on the quality of everyday life.
[185] Ibid., 113.
[186] Ibid., 342-3. This principle is the source of all obligations. It states people acquire obligations by doing things voluntarily and propounds the condition that the institution be just, as people do not have obligations to unjust institutions.

include justice as equality and fairness, awareness of the least advantaged or most vulnerable in society, and a notion of persons which includes rationality, justification, moral judgment, autonomy, and intrinsic and moral worth and dignity. Along with the notion of persons the importance of a human community, mutuality and reciprocity, and a recognition of positive and negative duties and obligations were examined.

Critique of Rawls

Analysis of the plethora of critical discussion surrounding Rawls' theory of justice is not intended to be entirely comprehensive, or unnecessarily detailed, but to examine his theory on its own terms and highlight key areas which have been debated and are important for the development of a middle way. A general critique will be offered before focusing on more specific critique from a middle way perspective.

General Critiques

Rawls' theory of justice is vastly criticised in method[188] and content,[189] for the philosophies it incorporates or addresses, specifically liberalism,[190] subjectivism and intuitionism[191] and utilitarianism.[192]

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[187] See pp. 220-2.

[188] Jeffrey H. Reiman, "A Reply to Choptiany on Rawls," Ethics 84 (1974) : 262-5. Alan Goldman, "Responses to Rawls from the Political Right," in *John Rawls' Theory of Social Justice*, ed. Gene H. Blocher, (Athens: Ohio University Press, 1980), 395-430. Leslie Pickering Francis, "Responses to Rawls from the Left," in *John Rawls' Theory of Social Justice*, ed. Gene H. Blocher, (Athens: Ohio University Press, 1980), 463-94. D. W. Haslett, "What is Wrong with Reflective Equilibrium?," The Philosophical Quarterly 37 (1987) : 305-11.

[189] Leonard Choptiany, "A Critique of John Rawls' Principles of Justice," Ethics 83 (1973) : 146-50. See also Reiman, "A Reply to Choptiany on Rawls," 262-5.

[190] Will Kymlicka, "Rawls on Teleology and Deontology" in *Justice and Political Philosophy*, vol. 1, *Mainstream Theories of Justice*, ed. Will Kymlicka, (Brookfield: Edward Elgar, 1992), 95-112. Sandel, *Liberalism and the Limits of Justice*, 96-7. Thomas Nagel, "Rawls on Justice," The Philosophical Review 82 (1973) : 220-34. Joseph Carens, "Rights and Duties in an Egalitarian Society," Political Theory 14 (1996) : 33-49. Chandran Kukathas and Philip Pettit, *Rawls: 'A Theory of Justice' and Its Critics*, (Stanford: Stanford University Press, 1990), 76-7, 92-5.

Rawls' key notion of the original position also is much debated and criticised.

Original Position

The original position has been the subject of intense scrutiny and debate, focusing on the nature and form of social contract,[193] the principles chosen or agreed,[194] the difference principle,[195] Rawls' interpretation of Kantian principles,[196] and the veil of ignorance.[197] Other critics highlight difficulties with Rawls' view of persons,[198] intergenerational justice,[199] and the neutral theory of the good[200] in the original position.

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[191] R. M. Hare, "Rawls' Theory of Justice," The Philosophical Quarterly 23 (1973), 144-55. Wojciech Sadurski, "Contractarianism and Intuition: On the Role of Social Contract Arguments in Theories of Social Justice," Australasian Journal of Philosophy 61 (1983) : 231-47.

[192] David Lyons, "Rawls versus Utilitarianism," Journal of Philosophy 59 (1972) : 535-545. Stephen Ball, "Economic Equality: Rawls versus Utilitarianism," Economics and Philosophy 2 (1986) : 225-44. Anthony Flew, "The Concept, and Conceptions of Justice: A Response to Le Grand," in *Applied Philosophy: Moral and Metaphysics in Contemporary Debate*, eds. Brenda Almond and Donald Hill, (New York: Routledge, 1992), 196-201.

[193] Jean Hampton, "Contract and Choices: Does Rawls have a Social Contract Theory?," in *Justice in Political Philosophy*, vol. 1, *Mainstream Theories of Justice*, ed. Will Kymlicka, (Brookfield: Edward Elgar, 1992), 137-60. Stephen L. Esquith and Richard T. Peterson, "The Original Position as Social Practice," Political Theory 16 (1988) : 300-34. Sadurski, "Contractarianism and Intuition," 231-47. Jeremy Waldron, "John Rawls and the Social Minimum," Journal of Applied Philosophy 3 (1986) : 21-33.

[194] Kenneth Arrow, "Some Ordinalist-Utilitarian notes on Rawls' Theory of Justice," Journal of Philosophy 70 (1973) : 245-63. Gilbert Harman, "Justice and Moral Bargaining," Social Philosophy and Policy 1 (1983) : 114-31. Nagel, "Rawls on Justice," 220-34. Sadurski, "Contractarianism and Intuition," 231-47. Julian Le Grand, "Equity as an Economic Objective," *in Applied Philosophy: Moral and Metaphysics in Contemporary Debate*, eds. Brenda Almond and Donald Hill, (New York: Routledge, 1992), 183-95.

[195] Edward McKenna, Maurice Wade and Diane Zannoni, "Rawls and the Minimum Demands of Justice," Journal of Value Inquiry 24 (1990) : 85-108. Waldron, "John Rawls and the Social Minimum," 21-33. See also pp. 111-12.

[196] Joseph Grcic, "Kant and Rawls: Contrasting Conceptions of Moral Theory," The Journal of Value Inquiry 17 (1983) : 235-40. Agneta Sutton, "The Kantian and the Consequentialist Elements in Rawls' Theory of Justice," Theoria 45 (1979) : 135-40.

[197] Adina Schwartz, "Against Universality," The Journal of Philosophy 78 (1981) : 127-43. Nozick, *Anarchy, State and Utopia*, 198-202. T. M. Scanlon, "Rawls' Theory of Justice," in *Reading Rawls: Critical Studies on Rawls 'A Theory of Justice'*, ed. Normal Daniels, (Oxford: Blackwell, 1975), 170-1, 177. Arrow, "Some Ordinalist-Utilitarian notes on Rawls' Theory of Justice," 245-63. Sadurski, "Contractarianism and Intuition," 231-47. McKenna, Wade and Zannoni, "Rawls and the Minimum Demands of Justice," 85-108. Jones, "Should Christians Affirm Rawls' Justice as Fairness," 251-7.

[198] Gregory Jones, 'Should Christians Affirm Rawls' Justice as Fairness: A Response to Professor Beckley," Journal of Religious Ethics 16 (1988) : 251-7. Patrick Gardiner, "The Original Position," *The London Times Educational Supplement*, 12 January 1973, 23a.

[199] Thomas Pogge, "Rawls on Global Justice," The Canadian Journal of Philosophy 18 (1988) : 245-51. Sugden, "Impartiality and Mutual Advantage," Ethics 101 (1991): 639. Brian Barry, *A Treatise*

The Two Principles

Critical comments on the content of the two principles focus on liberty and equality, the role of justice as fairness, the difference principle and maximin.

Liberty

Nozick claims Rawls does not state why people in the original position would reject a system of natural liberty. Nozick argues it must be because calculated self-interest does not lead them to adopt entitlement principles.[201]

In spite of Rawls' claim regarding the priority of liberty, Hart argues the rationality of men restricting their present choices because in future they may not want to do a particular thing is unclear.[202] Furthermore, Rawls' insistence on the priority of liberty conceals the character of the advantages and disadvantages of resolving conflicts. If liberty can be restricted to prevent violation of natural duties and obligations, it may be limited severely.[203]

Goldman argues Rawls' view of the priority of liberty does not provide help when liberties conflict.[204] Goldman claims Rawls argues for liberty on the wrong grounds[205] and that his list of basic liberties is too narrow.[206] Its bases should be the idea that all rational people place a great emphasis and value on liberty and that no

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on Social Justice: Theories of Justice, vol. 1, (London: Harvester-Wheatsheaf, 1989), 189-91. Arrow, "Some Ordinalist-Utilitarian Notes on Rawls' Theory of Justice," Journal of Philosophy, 260-1.

[200] R. L. Fern, "Religious Beliefs in a Rawlsian Society," The Journal of Religious Ethics 15 (1987) : 33-58. Nagel, "Rawls on Justice," 220-34.

[201] Nozick, *Anarchy, State, and Utopia*, 213-15. Nozick argues for these principles throughout this text.

[202] H. L. A. Hart, "Rawls on Liberty and Its Priority" in *Reading Rawls: Critical Studies on Rawls' 'A Theory of Justice'*, ed. Norman Daniels, (New York: Basic Books, 1975), 250-1. See also Carens, "Rights and Duties in an Egalitarian Society," 43-44 and Norman Daniels, "Equal Liberty and Unequal Worth of Liberty," in *Reading Rawls: Critical Studies on Rawls' 'A Theory of Justice'*, ed. Norman Daniels, (Stanford: Stanford University Press, 1989),253-81.

[203] Hart, "Rawls on Liberty and Its Priority,"238, 247-8.

[204] Goldman, "Responses to Rawls from the Political Right," 442-3.

one has a right to restrict certain liberties except to prevent harm to others.[207] The reality of conflicting liberties may be one which Rawls neglects, but is vital to the functioning of society. Avoiding harm to others might be part of a minimum standard or means of ordering liberty and freedom.[208]

Equality

Brian Barry argues the more Rawls' ideal shift from liberal equality to equality of outcome is pondered the less certain people will be that it is attractive.[209] Rawls assumes liberal equality is acceptable. Barry argues it only eliminates some morally arbitrary features, but still permits natural endowments to have a role.[210]

Michael Gorr claims, despite Rawls' support for "Natural Inequality Theory", that "natural differences among persons require some form of correction as a matter of justice",[211] Rawls does not argue for it because he regards it as unnecessary and self-evident. Rawls may assume that to establish satisfactory principles of justice must not be based on contingent differences in the distribution of natural assets suffices to establish that satisfactory principles must nullify, or compensate for, these differences.[212] For Gorr, this is a seriously flawed argument because it places great restriction on personal liberty.[213] Although Rawls' attitude toward natural differences

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[205] Ibid., 444.
[206] Ibid., 442.
[207] Ibid., 444.
[208] See pp. 230-7.
[209] Brian Barry, "Equal Opportunity and Moral Arbitrariness," in *Equal Opportunity*, ed. Norman E. Bowie, (Boulder and London: Westview Press, 1988), 33-5.
[210] Ibid., 34. Barry claims these natural endowments are equally arbitrary from a moral point of view.
[211] Michael Gorr, "Rawls on Natural Liberty," The Philosophical Quarterly 33 (1983) : 13.
[212] Ibid., 13. Gorr states if Rawls does assume this he is guilty of deep and serious confusion that could undermine the contractarian edifice he carefully sets out.
[213] Ibid., 13. Gorr is hesitant in his critique of Rawls.

is faulty and unclear, he recognises the need for providing minimum standards for all members of society.[214]

Justice as Fairness

In spite of Rawls' focus on justice as fairness, Klosko argues Rawls glosses over the danger of "free-riders", those who benefit without co-operating, in a community or society.[215] Further difficulties with justice as fairness focus on what constitutes a joint enterprise or co-operative scheme, how individuals incur obligations to contribute to it, and distribution of goods, including those necessary for a minimally acceptable life.[216] Klosko highlights the need for safeguards and minimum standards regarding the distribution of goods in a community.[217]

The Difference Principle and Maximin

Regarding the difference principle, critics argue against its content and function,[218] particularly regarding distribution of social advantages.[219] They claim it conflicts with Rawls' notion of equal liberties,[220] and entails the contradictory themes of justice as impartiality and mutual advantage.[221]

Distributive theories of justice might be based on entitlement, desert or more egalitarian approaches to goods and assets in society. Nozick propounds desert and entitlement theories as an alternative to Rawls' view of distributive justice. Nozick

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[214] See pp. 230-7.
[215] George Klosko, "The Principle of Fairness and Political Obligation," Ethics 97 (1987) : 354.
[216] Ibid., 353-5.
[217] See pp. 230-7.
[218] Scanlon, "Rawls' Theory of Justice," 205. Pat Shaw, "Rawls, the Lexical Difference Principle and Equality," The Philosophical Quarterly 42 (1992) : 75-7.
[219] Choptiany, "A Critique of John Rawls' Principles of Justice," 147. Nozick, *Anarchy, State and Utopia*, 192-5. Sugden, "Impartiality and Mutual Advantage," 641. R. M. Franklin, "In Pursuit of a Just Society: Martin Luther King JR and Rawls," The Journal of Religious Ethics 18 (1990) : 73.
[220] Matson, "Justice: A Funeral Oration," 111.
[221] Barry, *A Treatise on Social Justice: Theories of Justice*, 215. See also part 3.

argues in a social non-co-operation situation each individual deserves what he gets through his own efforts. No one else can make a claim of justice against this holding and it is perfectly clear who is entitled to what.[222]

David Cummiskey states desert theorists disagree with Rawls' claims that people should regard natural talents and abilities as common assets and share in their distribution. Cummiskey claims it does not follow from the moral arbitrariness of natural distribution that it may be treated as a common asset.[223]

Critics contrast Rawls' difference principle with views of justice as entitlement or desert. For Rawls, this principle is linked to the maximin.

Maximin

Goldman critiques the maximin in relation to the more advantaged in society,[224] while other critics focus on the worse-off members of society.[225] Critics claim the maximin does not provide the successful alternative to the principle of utility which Rawls proposes and his theory may be closer to utility than he realises.[226]

Barry argues the maximin criterion is not appropriate if the minimum achievable in a society either falls short of this set minimum or exceeds it. The most

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[222] Nozick, *Anarchy, State and Utopia*, 185-6. Rawls does describes society as a social co-operation marked by an identity and conflict of interests which leads to the need for principles to govern the distribution of social goods. Yet, Nozick's interpretation of the problem of distributive justice may be too narrow. It may be more accurate to note the force of Rawls' principles of distributive justice are formulated to counter natural distribution of talents, assets, abilities and opportunities. See *TJ*, 15, 302-3, 507.

[223] David Cummiskey, "Desert and Entitlement: A Rawlsian Consequentialist Account," Analysis 47 (1987) : 15. Cummiskey cites Nozick as a proponent of entitlement theory.

[224] Goldman, "Responses to Rawls from the Political Right," 433-5.

[225] Ball, "Maximin Justice, Sacrifice, and the Reciprocity Argument," 158. Ronald Dworkin, "What is Equality? Part Two: Equality of Resources," in *Justice in Political Philosophy*, vol. 1, *Mainstream Theories of Justice*, ed. Will Kymlicka, (Brookfield: Edward Elgar Publishing, 1992), 289-96. Rupert Buchanan, "Investment Income in Rawls' Theory of Justice," Dialogue 22 (1983) : 541. Roy C. Weatherford, "Defining the Least Advantaged," The Philosophical Quarterly 33 (1983) : 63-4.

[226] Ball, "Maximin Justice, Sacrifice, and the Reciprocity Argument," 177-81. Arrow, "Some Ordinalist-Utilitarian Notes on Rawls' Theory of Justice," 251-2.

Rawls could establish about the structure of preferences is that parties would insist if some specified minimum *could* be provided for all, then it *should* be provided.[227] This critique highlights the role a minimum standard, which may include distribution of goods, equal liberty or some notion of protection, might have in a society.[228]

Society and Community

Critiques of Rawls' view of society include the nature and content of his community, within which duties arise and human goods are to be shared, and their implications, including the dangers of patriarchy.

In general, Jackson critiques the assumptions of a Rawlsian community, and claims the fundamental issues are whether communities should or what kind can exist.[229] Francis argues Rawls is mistaken about what genuine community means and his notion of community is inadequate and unstable.[230]

Part of a Rawlsian society or community involves duties and goods.

Natural Duties

Regarding Rawls' primary duty to "support further just institutions", Klosko notes the general tension between requirements and duties which all human beings have versus those acquired as part of a particular political state, society or community in Rawls' theory.[231] More specifically, Carens claims Rawls is vague in the meaning of this primary natural duty, as compliance with natural duties is sometimes

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[227] Brian Barry, "Derivation of the Maximin Criterion," in *Justice in Political Philosophy*, vol. 1, *Mainstream Theories of Justice*, ed. Will Kymlicka, (Brookfield: Edward Elgar Publishing, 1992), 176. Emphases added.
[228] Ibid., 176. For further discussion of minimum standards, see pp. 225-32.
[229] Jackson, "Aristotle on Rawls: A Critique of Quantitative Justice," 101. Jackson argues once the community exists these things may have a place.
[230] Francis, "Responses to Rawls from the Left," 485, 489.

supererogatory.[232] If people can choose to fulfil or not fulfil natural duties for Rawls, his view might encompass a maximum rather than a minimum standard of duties necessary for the functioning of individuals and a community.[233]

Human Goods

In general, Jackson notes Rawls attempts to combine two contradictory concepts by arguing the good both is singular and plural, in his thin and full theories of the good.[234] Goods are conceived only as consumer items to be judged privately not as parts of the public weal.[235]

More specifically, Richard Arneson critiques Rawls' claim that advantages and disadvantages of social co-operation are measured by primary goods. Arneson argues for a fair socialisation process and fair preference formation.[236] Francis claims Rawls is unclear whether primary goods, and his claims about them, are supposed to be true by definition or as empirical generalisations.[237] There are difficulties in precisely defining and comparatively ranking these goods.[238] Ian Shapiro argues Rawls' characterisations and orderings are idiosyncratic and rely on controversial assumptions about human psychology.[239]

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[231] George Klosko, "Political Obligation and the Natural Duties of Justice," Philosophy and Public Affairs 23 (1994) : 251.
[232] Carens, "Rights and Duties," 41-2. See also *TJ*, 114-15. For Rawls, natural duties are not binding when they are too demanding and involve excessive risk or loss to oneself. Carens' concern is whether Rawls' system and principles leave room for a social duty to make good use of talents and skills.
[233] Ibid., 41. For further discussion of maximum and minimum standards, see pp. 223-9.
[234] Jackson, "Aristotle on Rawls," 105-6. Jackson claims what is thin and full is not the good but Rawls' account of it, and states the singular good is money, as it entails distributions in income and wealth by the difference principle.
[235] Ibid., 107.
[236] Richard J. Arneson, "Primary Goods Reconsidered," Nous 24 (1990) : 429-32. See also Arrow, "Some Ordinalist-Utilitarian notes on Rawls' Theory of Justice," 254. Arrow critiques Rawls' view of primary goods with regard to the problem of interpersonal comparison and an index-number problem in commensurating different goods.
[237] Francis, "Responses to Rawls from the Left," 475.
[238] Ibid., 475.
[239] Ian Shapiro, "Three Ways to be a Democrat," Political Theory 22 (1994) : 131. For example people's propensity toward risk and human motivation, according to Shapiro.

Dangers of Patriarchy

Feminist critics, in particular, address Rawls' omissions regarding knowledge about and implications of sexual identity and gender in the original position,[240] his sexism and male terms of reference.[241] They also critique his assumptions about the institution of the family,[242] particularly its alleged justice,[243] and marriage.[244]

Along with Rawls' assumptions about society, his view of individual persons also must be scrutinised.

Personhood

In general, Rawls is critiqued for his view of individuals,[245] specifically their conflicting egoism and mutual disinterest,[246] moral development,[247] the social nature of human beings,[248] and circularity of his view of self-esteem.[249]

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[240] Susan Moller Okin, "Justice and Gender," Philosophy and Public Affairs 16 (1987) : 45-6, 66-8. Okin also argues Rawls' principles of justice are incompatible with gender-structured society. Furthermore, she claims Rawls does not specify that persons in the original position do not know their sex, but this knowledge could affect their decisions given society's male-oriented structure. Karen Green, "Rawls, Women and the Priority of Liberty," The Australasian Journal of Philosophy 64 (1986): 28. She claims that the history of liberal tradition leads feminists to be suspicious that people in the original position will be male because they are referred to as "heads of families".

[241] Ibid., 46.

[242] Ibid., 45. Okin notes although Rawls does not state explicitly that heads of families are men, he does nothing to counter the assumption they will be men (47).

[243] Ibid., 47-8. Carole Pateman, "'The Disorder of Women': Women, Love and the Sense of Justice," Ethics 91 (1980) : 24. Matson, "Justice: A Funeral Oration," 107. They argue justice does not hold true for the family.

[244] Ibid., 47. See also Green, "Rawls, Women and the Priority of Liberty," 28. Green argues that Rawls does not scrutinise the family for justice or injustice, and in his discussion the institution of marriage is virtually invisible and regulated to the private sphere of morality. She believes marriage is a fundamental institution, by Rawls' own definition, and should be investigated by him. Cf. Pateman, "'The Disorder of Women'," 33.

[245] Alejandro, "Rawls' Communitarianism," 77-8, 82-6. Arrow, "Some Ordinalist-Utilitarian notes on Rawls' Theory of Justice," 262-3. Delaney, "Rawls and Individualism," 112, 116.

[246] Schollmeier, *Other Selves: Aristotle on Personal and Political Friendship*, 147-9. Francis, "Responses to Rawls from the Left," 474-5.

[247] Francis, "Responses to Rawls from the Left," 486. Deigh, "Love, Guilt, and the Sense of Justice," 405-9. Cf. Gilligan's view of moral development, chapter 1.

[248] Arrow, "Some Ordinalist-Utilitarian notes on Rawls' Theory of Justice," 262-3.

[249] Robert Yanal, "Self-Esteem," Nous 21 (1987) : 364-70.

Alejandro argues Rawls' view of human nature is essentially dogmatic, as justice is the only virtue that best expresses the individual's nature, is at the self's core and foundation of humanity. This monopoly of justice also offers an impoverished view of society.[250] It does not provide any room for isolation, democratic sentiments or moral conflicts within or among individuals.[251] So, Rawls' view may be too simplistic and reductionistic.[252]

Discussing individuals' moral nature, Deigh argues the missing element in Rawls' first two stages of moral development is an explanation of how the child develops an allegiance to parents or others as possessors of authority.[253] Rawls leaves unexplained how one advances to a morality of principles.[254] As principles are important in distinguishing the ethics of justice from the ethics of care, this omission is noteworthy for moral decision-making.[255]

Within moral development, Francis argues Rawls' account of producing a sense of justice fails. Rawls stresses the crucial element of human caring in his three stages of moral development, as reciprocal caring and beliefs in the good of justice interact to produce the sense of justice. Rawls needs a different explanation for the development of a sense of justice.[256] Yet, reference to both care and justice in moral development is vital in developing an amalgam of these two ethics.[257]

Alejandro argues although the principle of reciprocity is central to the acquisition of a sense of justice, it finally consumes the Rawlsian self. The self is to

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[250] Alejandro, "Rawls' Communitarianism," 85-6. Alejandro believes that Rawls' argument relies on justice being at the core of the self, the foundation of humanity.
[251] Ibid., 98. Alejandro claims there is no room for moral conflicts within an individual or among individuals because all are part of the social plan of society.
[252] See pp. 215-17.
[253] Deigh, "Love, Guilt, and the Sense of Justice," 405-9.
[254] Ibid., 409-11. Deigh notes Rawls' explanation of how one acquires an effective desire to act on principles of justice is not in dispute. The dispute is that not every attachment to moral principles, and so not every desire to act on them, gives rise to moral feelings as Rawls claims.
[255] See chapter 1.
[256] Francis, "Responses to Rawls from the Left," 486.

be the only source of aims and ends, but the Rawlsian self develops sentiments and attachments, not out of itself, but out of the influence of dealing with other selves. Alejandro concludes the self cannot be prior to its ends since a developed sense of justice requires the actions of others, and for people to value those actions they need a "common perspective" which assumes communal standards of worthiness to judge ends and endeavours.[258] An integration of the ethics of justice and care may provide such a standard.[259]

Deigh critiques Rawls' for his optimistic view of human nature. This optimism is shown through Rawls' thesis that the sense of justice is a form of good will toward humankind.[260] Furthermore, Francis notes Rawls wrongly assumes people in the original position are mutually disinterested and do not suffer from envy.[261] So, underlying Rawls' theory of justice is an optimistic view of humanity. A more accurate view recognises the tension between this optimism and Rawls' insistence on minimum standards which protect the least advantaged.

Critique of Rawls from a Middle Way Perspective

The primary theme which emerges from an analysis of Rawls' theory of justice is the need for minimum standards to protect the vulnerable in society. It arises from further critique of the principles of justice, society or community, persons, morality and duties and obligations.

Principles of Justice

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[257] See chapter 5.
[258] Alejandro, "Rawls' Communitarianism," 82-4. See *TJ*, 517-18.
[259] See chapter 5.
[260] Deigh, "Love, Guilt, and the Sense of Justice," 393, 403-4.
[261] Francis, "Responses to Rawls from the Left," 474-5.

Further critique of Rawls' theory of justice will focus on liberty, freedom and their limits. Then equality, distribution involving mutuality and reciprocity, his recognition of and provision for the least advantaged, the role of responsibilities, fairness and appropriateness are examined.

Liberty

Questions may arise about the extent and limits, coverage and adequacy of Rawls' first principle of liberty.[262] Rawls addresses the "equal basic liberties" and the "most extensive" system of liberty which may conflict. Yet, he recognises the role and importance of both minimum and maximum liberty or standards within his principle.[263]

Regarding liberty, autonomy and freedoms are not unlimited in society. Our freedom is limited in doing harm to ourselves, like having to wear a motorcycle helmet or a seat belt. It is also restricted in causing harm to others, i.e. assault, murder, liability or slander.[264] Yet, protecting freedoms also is necessary. There are some freedoms so highly valued in society that despite their potential harm to some, they are protected for the greater public good, i.e. freedom of speech or the press.[265]

Liberalism can lead to anarchy. Anarchy allows chaos and harm to others. It is not sufficient to claim that liberty will be modified or restrained by other people's liberty, thus avoiding problems regarding freedoms and restraints in society. If freedom does pose restraints, they might occur only after harm has been done. It seems preferable to be preventative not corrective regarding harm in a just society. A

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[262] See pp. 85, 87-8. Rawls, *TJ*, 302.
[263] Rawls, *TJ*, 302.
[264] These limits may be preventative, corrective or restorative.
[265] As these freedoms allow people to speak out against ideas and policies with which they disagree and may expose immoral or illegal dealings, they are seen to contribute to the greater public good. Thus, they are protected.

preventative society would be proactive, putting in place legal, moral and social rules which avoid harm from happening.[266] This can involve incentives or deterrents. Alternatively, a corrective society would base its rules on punishment for wrong doing and seek to be restorative, being reactive and involving retribution.[267] These two types of society are based on either a pessimistic or optimistic view of human beings.[268] The former assumes harm to others will be done and should be restrained, while the latter assumes people will be and do good to others. As far as is possible, a preventative approach is preferable as it aims to avoid and restrain harm from occurring.

Equality

Regarding equality, Rawls advocates distribution which allows the least advantaged to benefit equally.[269] His difference principle also expresses reciprocity or mutual benefit.[270] There are at least two senses of reciprocity. People may receive exactly the same benefit from a transaction in society, or they may receive a different, but sufficient or appropriate, benefit.[271] As some people will demand too much and others will not require enough, some means of regulating benefit to ensure reciprocity is needed. This might be achieved through a notion of desert, where people earn their benefits, or needs, where people with like needs enjoy similar benefits and all have their basic needs met. Rawls usefully emphasises mutuality and reciprocity in

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[266] In spite of the dangers of liberalism, this preventative aim of society can be viewed as the essence of contractarianism and so is not a negative but a positive critique of Rawls.
[267] A further danger of liberalism is that being based on individualism it may, in its more extreme forms, move into subjectivism where there is no objective perspective from which to assess choices, actions, freedoms or standards of justice as right or wrong, appropriate or inappropriate. Ultimately, this kind of liberalism can lead to relativism where there is no absolute truth or guidelines.
[268] Locke, *The Second Treatise of Civil Government*, chapters 2 and 8. Hobbes, *Leviathan*, 141-3. See also pp. 59-60.
[269] Rawls, *TJ*, 302-3.
[270] Ibid., 102.
[271] This may be expressed as the difference between strict equality and equity. See pp. 230-7.

society. They also play a role in moving beyond basic distribution of goods and inequalities, being connected to relational elements and aid the flourishing of people and society.[272]

Mutuality and reciprocity are related to redress, which deals with differences in society and means of compensating for them. Rawls advocates compensating for natural endowments, claiming these inequalities are undeserved.[273] Because it is difficult to assess and compensate tangibly for these inequalities, Rawls' version of redress may be unworkable both in theory and practice. With natural physical endowments like bigger or smaller noses or breasts, it is not only difficult to understand *why* society should compensate for them, but also *how*. If plastic surgery was offered to redress physical differences, who would judge which people should receive it and what they should receive? Plastic surgery might be given on request, based on clinical judgment or degrees of need. As people have different wants, some would request enlargements, while others would want reductions. If redress for natural endowments was implemented, the result could be a society of very similar people. So, the implications of redress for natural endowments and inequalities are potentially dangerous.[274]

Rawls' principle of equality ensures that social and economic inequalities are to the greatest benefit to the least advantaged.[275] This is Rawls' attempt to protect minorities, the weak and vulnerable in a liberal democratic society, as they cannot necessarily protect their best interests and are at the mercy of others. Thus, Rawls

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[272] These elements also are found within the ethics of care. See pp. 48-52. For further discussion of their role within a middle way, see pp. 217-23.
[273] See p. 86. Rawls, *TJ*, 100.
[274] Even if Rawls' notion of redress worked in theory, as it is in favour of those the least advantaged, they may not always be the weakest and most vulnerable in society. For example, in the health care system in the United States it is not the poorest who suffer the most because they receive government coverage for their health care. It is the lower middle class, those who just fail to qualify for government aid and cannot afford private heath care insurance who are in the most precarious and vulnerable position.

rightly builds into his notion of social justice a safety net to make sure the most advantaged do not construct a society which is only or primarily to their benefit.[276]

Some safety net is important and necessary to protect against a self-interested majority.[277] Whether Rawls' conception is the only or best way to protect the vulnerable in society is debatable.[278] Weighting society and its standards in favour of the less advantaged can be seen as unfair to the more advantaged.[279] The function of such parameters is to serve as a protection. The existence of more and less advantaged people is intrinsically unfair, so weighting society in favour of the latter helps redress the ultimate balance of fairness and justice. Without such minimum standards, the less advantaged will not necessarily be helped or aided by others. Absolute minimums, such as restraint of harm, can be defined in attempting to ensure a basic level of treatment for all in society. Alternatively, maximum standards which seek to contribute positively to a person's growth or flourishing can be identified.[280]

There are at least two distinct notions of society at work here. One is that individuals should be and are responsible only for themselves and those they *choose* to help, including family, friends and particular individuals or organisations.[281] Another perspective is that all people have a wider social responsibility to others. These perspectives highlight the tension between individual versus communal responsibility.

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[275] Rawls, *TJ*, 302.
[276] Attention may be draw to the tension between needing redress and its potential dangers. Here, the focus of critique is that Rawls highlights its importance, but his view of redress is inadequate.
[277] Rawls recognises the self-interest of the parties in the original position. Rawls, *TJ*, 11.
[278] See pp. 114-16.
[279] See pp. 116-17. Goldman, "Responses to Rawls from the Political Right," 433-5. Ball, "Maximin Justice, Sacrifice, and the Reciprocity Argument," 158.
[280] See chapter 5.
[281] This view of responsibilities, which may be found within the ethics of care, is critiqued from an impartialist perspective. For example see Blum, "Gilligan and Kohlberg: Implications for Moral Theory," 477-8.

If there is some communal responsibility, how do we accept social responsibility while avoiding the dangers of free-riders, those who want the benefits from society without the costs?[282] Incentives or disincentives could be provided for anti-social members to participate in society and not be free-riders. Yet, perhaps this danger cannot be avoided completely. It is the price paid by a society in meeting everyone's basic needs.

Regarding needs and minimum standards, Rawls' idea of fair and equal opportunity being open to all also requires examination.[283] To achieve this principle, society would have to recognise a high degree of control is necessary. This control can be in relation to information about people, making and enforcing laws, or agreed social sanctions where individuals or groups exercise power over others. Laws and social sanctions can serve as the minimum standards required to achieve the goal of fair and equal opportunities related to justice. Rawls again focuses on a minimum, but society also might need a maximum standard or ideal at which to aim.[284]

Rawlsian equality contains the minimum assumption that all people will be treated alike or consistently, given equal consideration. Departures from this conception must be defended or justified.[285] This equality is useful in providing a basic acceptable standard within which to treat people. Yet, treating people exactly alike might not be appropriate in all cases. Rawls acknowledges the possibility of departures from equality and the need to justify these differences in treatment.[286] Such justification is linked to equity, allows appropriate differentiation and ensures

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[282] See p. 115. Klosko, "The Principle of Fairness and Political Obligation," 354.
[283] Rawls, *TJ*, 73-4.
[284] This maximum may relate to care and encourage members to flourish. See pp. 216-17.
[285] See pp. 89-91. Rawls, *TJ*, 507.
[286] See p. 90.

people are not exploited. So it provides a minimum means or level of protection for people, while being appropriately sensitive to differences between them.[287]

Furthermore, Rawls claims democratic equality ensures the prospects of the less fortunate are protected.[288] If this type of equality is democratic, then the majority will decide the best way to protect the less fortunate and content of 'best interests'. Difficulties arise in determining whose interests are best served by a decision. The majority might protect their own, not others', interests. Perspectives on 'best interests' can change with time, political and social climates, technology, relationships and emotions. So, using 'best interests' alone is a very intricate and complex means of ensuring equality.[289]

Minorities are not always very vocal, or able to articulate their needs, wants, desires and values, particularly in the public domain. Within health care, often the most vocal and persistent patients receive the treatment they want. Nurses and doctors are sometimes persuaded by or concede to these demands.[290] In hospital patients are unwell, in a strange environment, and not themselves. To ensure their needs, wants and values are expressed nurses recognise the importance of speaking on behalf of the patient and protecting his/her best interests. The nurse articulates what she thinks or knows the patient would want regarding treatment decisions or relations with doctors or families, ensuring he/she receives fair, equal, appropriate and desired treatment. So the role of the nurse advocate is important in safeguarding against the danger that individuals and minorities are overlooked, ignored or marginalised.

After investigating limits of liberty, the dangers to the vulnerable in society, the emphasis on minimum standards, while recognising the need for maximum

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[287] See chapter 5, especially pp. 230-7.
[288] See p. 89. Rawls, *TJ*, 75.
[289] For disparate views of best interests see the Child B case analysed in chapter 6.

standards, justice as equality and fairness have been examined. Rawls' principles of justice focus on the formation of society.

Society and Social Union

Social co-operation, motivations, the need for minimum standards, shared ends and means, autonomy and objectivity will be analysed.

A Rawlsian society is based on social contract theory.[291] A primary question regarding this form is whether or not *all* people benefit from the social co-operation.[292] Rawls tries to ensure that the worst-off do benefit, as society, and its inequalities, are geared to their advantage and protection through the second principle.[293] If social co-operation is constructed to protect the worst-off, then what motivates the best-off to participate?[294] It seems likely that there is some material or emotional benefit which motivates them. The former can include the best-off contributing to a society because they receive a material gain, whether financial or in the form of other resources. Emotional reward or gain can involve feeling a sense of fulfilment because they are doing their moral duty, in helping others, and fulfilling their social responsibility.

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[290] For instance, middle class people are known for having high expectation and demand levels with nurses and doctors, as well as less hesitation about complaining if they fail to receive what they want.

[291] See pp. 91, 93-4. Rawls, *TJ*, 11.

[292] See pp. 115-16.

[293] See p. 86. Rawls, *TJ*, 302.

[294] For example, many American do not want to pay for other people's health care. They believe individuals should work to take care of themselves, and if they do not then they must accept the consequences, which may include having no health care insurance. In contrast, many British citizens accept some redistribution of resources to contribute to the National Health Service, meeting the health care needs of others, and themselves. This situation may be due to different social or cultural frameworks or a more pragmatic reason such as different taxation systems. British citizens may have a more socialist notion of social responsibility, whereas American citizens may be more individualistic.

In assessing potential motivations, the material incentive seems more likely, as human nature can be generally self-interested.[295] Rawls notes the role of self-interest for people, but also claims they are mutually disinterested.[296] There may be a tension between these two aspects of humanity.[297] Yet, as people may be generally self-interested, society will need minimum rules and standards to provide protection for all members.[298]

A well-ordered society includes justice as fairness or equality, organised protection, a means of distributing goods and meeting the basic needs of all members, and a notion of responsibility and care.[299] One key feature is a shared end, which Rawls advocates as a goal of community.[300] Furthermore, a means of achieving this shared end is needed. Yet, this can be difficult. We must recognise we are born into some tradition or society with values and perhaps end goals and that this context influences our decisions. Western society, for example, is pluralistic and consists of a number of different communities and values systems. There are disparate views on what the ends of society should be. Furthermore, even if we could agree an end, disagreement on acceptable means of achieving it is highly likely. One way to reach some consensus on the ends of a community or society, in spite of differing contexts and cultures, may be through focusing on minimum, not maximum, standards.[301]

Rawls' claim that a shared end gives satisfaction and pleasure to all may be too optimistic,[302] particularly when contrasted with his recognition of self-interested

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[295] Obviously, some individuals are altruistic and concerned for the least advantaged and vulnerable in society, but they seem notable by exception and do not constitute the norm or general view of humanity.

[296] See p. 98. Rawls, *TJ*, 11, 13.

[297] Whether these two aspects of human nature are evenly balanced and clear opposites may be debatable. A clearer opposite of self-interest may be caring for others.

[298] See pp. 230-7.

[299] These elements will play a role in developing an integration of care and justice. See pp. 223-9.

[300] See p. 94. Rawls, *TJ*, 527. Cf. MacIntyre, *After Virtue*, 148.

[301] See pp. 230-7.

[302] Rawls, *TJ*, 523, 526.

humanity and protective measures required in the formation of his society.[303] Furthermore, a shared end can bring unforeseen consequences. The agreed means may not work. Some members might have compromised and be unhappy with the result. Not all members agreeing on the shared end will see its fulfilment, as there may be a considerable time lag. All of these circumstances potentially contribute to people's dissatisfaction with the shared end. Perhaps the aim of the shared end should not be bringing satisfaction or pleasure to all, but minimising the harm experienced. The purpose and result of the shared end may be more conservative and minimalistic, rather than ideal and maximal.[304]

Rawls also argues a well-ordered society would include autonomy.[305] One difficulty with Rawls' criterion of autonomy is the extent to which it applies. Autonomy has two strands, namely freedom and self-determination. If every member of a well-ordered society is completely autonomous it may be individualistic to such an extent that this society cannot function or leads to anarchy.[306] Self-determination encounters difficulties when individuals' choices conflict in society.

A well ordered society also involves objectivity, according to Rawls.[307] Yet, it is difficult to assume individuals are or can be totally objective. We all interpret situations based on our subjective perspective. We cannot avoid subjectivity altogether. This is not necessarily problematic provided it is recognised and taken into consideration. Objectivity is possible, but it may be more difficult for some than others. There seems to be a degree of uncertainty in predicting, in advance, individuals' degrees of objectivity.

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[303] See pp. 86, 93-4.
[304] See pp. 230-7.
[305] See p. 95. Rawls, *TJ*, 513-5.
[306] See pp. 122-3.
[307] Rawls, *TJ*, 513-15.

Although Rawls emphasises autonomy and objectivity, he also notes the "close-knitted" expectations of individuals in society.[308] Although he does not place great weight on the latter, he does recognise individuals' connectedness and relationships on some level.[309] What is important to note is the objective and rational, subjective and emotional, autonomous and relational elements are all part of being human. We need to focus on maintaining a balance between and doing justice to all of them, not over-emphasising one dimension.[310]

In critiquing a Rawlsian society, the vital role of minimum standards in society again was evident. The importance of motives, role of shared ends and means and a balanced and holistic perspective of persons also were explored.

Personhood

Critical analysis of Rawls' view of persons emphasises the importance of a holistic perspective, motivations, and investigates the notion of 'good' persons.

Rawls accurately stresses the importance of rationality in relation to persons.[311] Yet, rationality alone is too narrow. It is not the only important element of a person. Alternative perspectives from the ethics of care stress relational,[312] experiential[313] and theological aspects.[314] Depending on which perspective of personhood is weighted more heavily, there are different explanations not just for what makes a person, but also for what motivates people.

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[308] See p. 90. Rawls, *TJ*, 80.
[309] This recognition of connectedness by Rawls highlights a common feature between his ethic of justice and that of the ethics of care. See chapter 1 and pp. 48-52, 55-9. Interestingly, MacIntyre also notes the importance of community within his ethic of justice. See pp. 148-50.
[310] Recognising these dimensions is vital to a holistic view of humanity. See pp. 215-17.
[311] See pp. 102-3. Rawls, TJ, 142, 144.
[312] Gilligan and Noddings in particular stress this aspect of persons. See chapters 1 and 2.
[313] See pp. 60-2. Benner and Wrubel, *The Primacy of Caring*, 41-50.
[314] See pp. 35-7. Campbell notes this element of persons, particularly in his discussion of *agape* and transcendence. Other alternatives include sociological, psychological and biological perspectives.

Rawls propounds the Aristotelian Principle, that people prefer and enjoy activities which call on more complex capacities, claiming it states a deep psychological fact about people.[315] Is this an accurate description of human beings? In the workplace, different types of individuals and motives are found. Some people want to be challenged, promoted and are happy to assume more responsibility. One danger with the highly motivated can be their willingness to do anything to get what they want, including harm to others and themselves. Alternatively, other people work to pay the bills, are not ambitious and are content to do the same job for many years. Furthermore, the Aristotelian Principle would not hold true for the "free-riders".[316] To guard against free-riders and harm done to others by the highly motivated, society might need minimum standards below which treatment of persons must not fall and which everyone must meet before receiving benefits. Maximum standards also may be needed to challenge the highly motivated and seek to maximise the potential of each member to flourish.[317]

In relation to the motivations of different people, rewards and punishments might attempt to develop 'good' or virtuous people.[318] Rawls believes a good person has a higher degree than the average of the 'broadly based features of moral character it is rational for persons in the original position to want in one another.' These properties include the fundamental moral virtues and a sense of justice and obligation.[319] His notion of a good person is vague, as agreement on the content of his requirements is unclear. A variety of descriptions of fundamental virtues and

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[315] Rawls, *TJ*, 426.
[316] See pp. 115. Klosko, "The Principle of Fairness and Political Obligation," 354.
[317] See chapter 5.
[318] Whether or not we need to encourage people to be good depends on what we believe to be the fundamental nature of human beings and whether and how genuine goodness is related to reward and punishment. See pp. 59-60. Locke, *The Second Treatise of Civil Government*, chapters 2 and 8. Hobbes, *Leviathan*, 141-3.
[319] See pp. 104-5. Rawls, *TJ*, 435-7.

sense of justice can be found, for example, in a pluralistic society. It is hard to judge between competing accounts of virtues; so Rawls' criteria are not very helpful.

Developing 'good' people might come from more informal structures, like family and friends, or more formal structures like education and law. It might involve training and practice. A society can try to develop 'good' people, but as it cannot guarantee they will always be or do good. So, standards which provide a minimum threshold for behaviour and expectations can be useful and necessary. They might act as a safety net in case people are not good.[320]

For Rawls, the minimum standard for moral personality is the capacity for a sense of justice. This entitles people to equal justice and liberty on a par with others.[321] Yet what about individuals who either do not exhibit this capacity or not to the minimum degree Rawls requires? Although Rawls allows for variations in this capacity,[322] those lacking it could be denied the protections and guarantees of justice. So a more adequate minimum standard must provide more complete protection for individuals within a moral framework.[323]

Within morality, there is a necessary distinction between being and doing good. The former involves the whole person, including values, morality, and actions. Being good is both internal and external. Doing good focuses on external actions. A person could perform a good action for a selfish or bad reason. A person might help an elderly woman across the street, because he/she knows the woman is wealthy and hopes for some tangible gratitude or wishes to be seen as doing good. Motives matter in morality and descriptions of goodness.

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[320] See pp. 230-7.
[321] See p. 104.
[322] See p. 104. Rawls, *TJ*, 506-7.
[323] See pp. 230-7.

Explicit and external behaviour is a more easily identifiable than internal and subjective attitudes in evaluating someone's moral stance. Behaviour is a more objective base from which to judge a person, while attitudes and characteristics are more subjective and difficult to asses. In morality, minimum standards which ensure an objectively acceptable level of treatment for all people are needed. Simultaneously, encouraging people to aim for maximum standards in morality also is vital. Nurses and doctors have criteria which they must fulfil before being qualified. These include minimum standards, like a selection process, exams and basic clinical skills. There also are maximum standards, such as relational skills, care and compassion, that patients desire in nurses and doctors, which surpass basic clinical skills and knowledge. So, both minimums and maximums have an important role in morality.[324]

In critically exploring Rawls' notion of the person, the importance of a holistic view of humanity, understanding the role of motives, and the need for minimum and maximum standards in morality have been explored.

Morality

For Rawls, morality involves virtue, moral capacities and judgments, and a notion of the right and good. These aspects of morality be connected to ideal and non-ideal, maximum and minimum, standards.

Virtue plays a role in morality. Rawls describes the nature of moral virtues as sentiments and habitual attitudes leading people to act on principles of right.[325] Seeing them as sentiments seems a rigid view, as persons then either possesses them or not. Perhaps virtues are not just sentiments but capacities, qualities and

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[324] This combination of minimum and maximum standards may be paralleled to amalgamating

characteristics. Depending on which perspective a person accepts, there are different views of whether or not virtues can be encouraged or enhanced.[326] This contributes to a static, rather than dynamic, view of morality.

If virtues are viewed as "habitual attitudes",[327] they are considered primarily products of habit. Yet, individuals can be encouraged, through education, training and incentives, to acquire or exhibit virtues to greater degrees.[328] A person might have no self-control regarding chocolate. This individual could recognise the desirability of and need for self-control and take measures to acquire or increase it through exercising the will. So, people are able to attain or strengthen their possession of virtues.

If the virtues are primarily "habitual attitudes" they might derive from the environment, family, friends, society and culture in which we are raised, a profession, or the broader tradition to which we belong.[329] These sources of such attitudes highlight the role of context in shaping moral views and virtues.

Rawls accurately recognises the role of context and background regarding justice. For him, the "circumstances of justice" explain the need for principles of justice and are related to human co-operation and conflict.[330] It is important to note that the background and context of any situation can have an effect on the people involved. This impact can be observed in the values from which people operate and their moral choices on at least two levels. In different contexts a persons may make either similar or different decisions regarding the same moral issue. He/she also may give similar or different justifications for that choice. More fundamentally, people

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elements of justice and care. See chapter 5.
[325] See pp. 108-9. Rawls, *TJ*, 437.
[326] See pp. 132-3.
[327] Rawls, *TJ*, 437.
[328] See pp. 132-4.
[329] For further discussion of such contexts, see pp. 203-8.

from differing backgrounds might hold varying and disparate moral values and views. These may be compatible or be conflicting when approaching morality. Context and background can affect the moral decisions and judgments made as well as justifications given.[331]

Rawls argues the core of moral theory is moral capacities which entail "judging things to be just and unjust".[332] In moral judgment, justice is important but may not be the most important criterion for assessing people and situations. Morality also includes notions of right and wrong, good and bad, responsibilities and duties, and virtues. Rawls accurately acknowledges the role of the right and good, duties and virtues,[333] but may be in danger of over-emphasising justice in his moral theory.

Rawls also accurately notes the importance of moral judgement and justification. He assumes judgments are made by persons with the ability, opportunity and desire to reach a correct decision.[334] Not all persons have the ability or are given such opportunity, i.e. children, the elderly, mentally ill and unconscious. Rawls seems to hold a particular view of decisive individuals as being healthy, rational, autonomous adults. Yet, an adequate moral theory needs a place for the vulnerable, to ensure their wishes and choices are acknowledged and protected and that they are not exploited. Furthermore, Rawls presumes people have the *desire* to reach a correct decision. Not all individuals have this desire, as some want to rebel and choose to do what is wrong. Rawls' assumptions are inaccurate and optimistic regarding humanity and desires.[335]

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[330] See p. 99. Rawls, *TJ*, 126-30.
[331] See pp. 203-8.
[332] Rawls, *TJ*, 46-7.
[333] See pp. 106-10.
[334] See pp. 108. Rawls, *TJ*, pp. 47-8.
[335] See Locke, *The Second Treatise of Civil Government*, chapters 2 and 8.

Regarding justification, Rawls interestingly stresses the importance of "everything fitting together into one coherent view" and being a "unified whole".[336] Justification requires coherence. In justifying a moral judgment, one must point to what is fitting. Fittingness may be related to what is appropriate.[337] Rawls also acknowledges this concept regarding moral standards being appropriate to, or fitting, a person's role or position.[338] So, fittingness and appropriateness may be important notions within justification and a moral framework.[339]

One practical application of appropriateness is in the area of distribution of goods and resources. Distribution can be based on desert or merit, needs, wants or entitlement. Rawls accurately argues justice as fairness rejects distribution based on moral desert, because this notion would not be chosen in the original position.[340] He is correct in his rejection of desert, but not in his reasons for it. The notion of desert is dangerous because some members of society may not contribute in the requisite ways, leaving them vulnerable to those who determine such desert. Furthermore, a few highly deserving individuals can obtain a greater share of societal resources, while others' basic needs are not met. A rejection of desert emphasises the need to protect members in society.[341]

A key part of morality includes duties and obligations in a society or community.

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[336] See pp. 99-100. Rawls, *TJ*, 579-80. This position can be linked to the coherence theory of truth. See Alan R. White, "The Coherence Theory of Truth," in *The Encyclopedia of Philosophy*, vol. 1-2, ed. Paul Edwards, (New York and London: Collier Macmillan), 1967, 130-3. See also F. H. Bradley, *Appearance and Reality: A Metaphysical Essay*, (Oxford: Clarendon Press, 1959). F. H. Bradley, *Essays on Truth and Reality*, (Oxford: Clarendon Press, 1914).
[337] See E. David Cook, *Responsible Decisions*, (Bramcote: Grove Books, 1974), 12.
[338] See p. 107. Rawls, *TJ*, 467-8.
[339] See pp. 237-45.
[340] Rawls, *TJ*, 310-1.
[341] See pp. 230-1.

Duties and Obligations

For Rawls, duties can be positive, to do good, or negative, not to do harm.[342] This seems a useful distinction and will play an important role within the development of a middle way.[343] We will experience situations where we can and should do good, and those in which we can only limit the bad or harm being done. Nurses and doctors have a negative duty not to harm (non-maleficence) and a positive duty to do good (beneficence) to their patients. This distinction between negative and positive duties, or responsibilities, offers a parallel with the relationships between justice and care. We can interpret justice as requiring the minimum and care the maximum standards. Justice may serve to protect, like negative duty, seeking to avoid or minimise harm done. It also may be corrective regarding damage done. In contrast, care may serve to encourage and maximise the good done, like a positive duty, surpassing the minimum and encouraging people to fulfil an ideal. The roles of minimum and maximum standards might be distinct, as they may serve different functions in a society or community. They also might overlap, where justice is part of a maximum and care part of a minimum standard.[344]

Rawls also discusses the fundamental duties of mutual respect, mutual aid[345] and justice.[346] Justice can be the minimum duty and mutual respect and aid viewed as less fundamental. Individuals could argue we have no fundamental duties, except the duty to look after ourselves. They might want some protection from society, but only in light of maximum self-interest and freedom. Alternatively, we may have a duty to care for or take care of others in society. If so, Rawls' inclusion of mutual aid is

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[342] Rawls, *TJ*, 114.
[343] For further development of the notion of positive and negative responsibilities, or duties, see pp. 223-9.
[344] See pp. 228-34.
[345] Rawls, *TJ*, 337-9.
[346] Ibid., 116.

accurate because we have a duty not just to meet our own needs but to meet everyone's basic needs in a compassionate way. Society needs some means of recognising duties and responsibilities and agreeing minimum and maximum standards.[347]

Rawls accepts the Kantian duty of mutual aid,[348] noting people should adhere to it because they may need other people's help in the future. Rawls argues the primary reason for accepting this duty is the sense of confidence we can have in the good intentions of others and the knowledge they are there if we need them.[349] This is not mutual aid, but self-interest. Individuals act not out of concern for others, but protecting their own eventualities. Rawls' interpretation of Kant and emphasis may be subject to suspicion, as Kant strongly advocates treating people as ends in themselves and never merely as means.[350] Treating people as ends versus means is important, especially when it is not to an individual's advantage, because it affects how people view and interact with others. Such a view may entail the recognition of the individual worth and value of others.[351]

Treating people as ends in themselves may involve a degree of respect for others, as human and moral beings. Perhaps this is part of the reason Rawls advocates mutual respect. It may be important to a balanced notion of others, society and morality. Respecting the importance and value of other people might help curb self-interest. Mutuality might be one way of monitoring those who demand more in society, and those who do not ask for enough. Mutual respect might be a method of balancing our moral frameworks, differences and conflicts. It also might be a means

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[347] See pp. 230-7.
[348] John Rawls, "Kantian Constructivism in Moral Theory: Rational and Full Autonomy," The Journal of Philosophy 77 (1980) : 515-72.
[349] Rawls, *TJ*, 337-9.
[350] For Kant, this is *the* categorical imperative, a maxim which must be universalisable. Kant, *Foundations of the Metaphysics of Morals*, 44. Paton, *The Moral Law*, 29-30.

of assessing what is appropriate in our actions toward, decisions about, and treatment of others. So both mutuality and respect may play an important role within morality regarding minimum and maximum standards in our dealings with others.

The role of the virtues, moral judgment, justification, fittingness, some dangers of desert and the need for minimum standards of protection have been analysed. The importance of positive and negative duties within morality and society, their connection to treating people as ends and not means, mutuality and respect and minimum and maximum standards were examined.[352]

Conclusion

Rawls' theory of justice is liberal, individualistic and contractarian. At its base is the belief and rationale that individuals will select his two principles of justice, focusing on liberty and equality, which will establish a just society.[353] This is achieved through the original position and applying justice as fairness.[354]

In the critical investigation of Rawls' ethic of justice, two levels have emerged. The first is key themes necessary for further development in any attempt to consolidate an ethic of justice and to develop a middle way. The second is clarification and development of crucial common themes in both Rawls' ethic of justice and the ethics of care. In relation to the themes for further and future development the notion of and need for minimum standards is central. This arose from analysing liberty and preventative measures in society, equality and inequality, particularly regarding redress and fair and equal opportunity for all. Some means of protection for the least-advantaged, vulnerable and minorities is vital especially

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[351] See pp. 213-15.
[352] See chapter 5.
[353] See pp. 86-91.
[354] See pp. 91-3, 98.

against self-interest. This leads to an emphasis on holism. As within the ethics of care, a holistic understanding of persons, mutuality and respect is important in safeguarding the vulnerable, or those lacking certain capacities. Rawls accurately highlights both positive and negative duties in society, which can parallel minimum and maximum, non-ideal or ideal standards. Maximums can relate to shared ends, motivation for persons and morality. We have seen that Rawls offers us an analysis of morality in which rationality, moral judgment, justification and fittingness play important roles.

In terms of the congruence of the ethics of care and Rawls' ethic of justice there are common themes of personhood, rationality, morality, holism, minimum and maximum standards and responsibilities and society or community.[355] Furthermore, justice as fairness and equality may provide a means of protection against the subjectivism and relativism of the ethics of care. Justice as equity and a notion of fittingness and appropriateness, require further exploration in relation to developing a middle way. Before addressing that task, it is important to examining Alasdair MacIntyre's view of the ethics of justice.

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[355] See pp. 77-84, 121-40.

Chapter Four: Justice in Alasdair MacIntyre's Theory

Introduction

In investigating the relationship between the ethics of justice and care, critical analysis of Gilligan provided a grounding in the debate and the highlighted the possibility of some integration.[1] Then the ethics of care was explored and analysed further, both negatively and positively.[2] Rawls has provided an ethic of justice based on social contract and where justice is primarily centred on abstract, hypothetical rules.[3] In contrast, MacIntyre provides a theory of justice centred on morality, virtues and community.[4] Discussion will focus on separate and parallel description and critique of elements in MacIntyre's theory, including a view of traditions and history, humanity, community, rationality, justice, the virtues and the good or flourishing.

Description

MacIntyre explores the breakdown of modern morality, which entails the loss of traditional Aristotelian moral language, values and virtues.

For MacIntyre, modern moral utterance and practice can be understood only as a series of fragmented survivals from an older past. The insoluble problems they have generated will remain so until this is well understood.[5] Regarding the breakdown of moral language and clear meanings, MacIntyre states

> What we possess...are the fragments of a conceptual scheme, parts which now lack those contexts from which their significance derived. We possess indeed simulacra of morality, we continue to use many of

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[1] See chapter 1.
[2] See chapter 2.
[3] See chapter 3.
[4] MacIntyre, *AV* and *WJWR*. See also MacIntyre, Alasdair. *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy and Tradition*, (Notre Dame: University of Notre Dame Press, 1990).
[5] MacIntyre, *AV*, 110-11.

> the key expressions. But we have - very largely, if not entirely - lost our comprehension, both theoretical and practical, of morality.[6]

MacIntyre further argues

> In this conceptual *mélange*...What is lacking...is any clear consensus, either as to the place of virtue concepts relative to other moral concepts, or as to which dispositions are to be included within the catalogue of the virtues or the requirements imposed by particular virtues.[7]

MacIntyre argues modern morality has broken down, especially regarding the virtues, and implies this results in a pluralistic society.

For MacIntyre, the result of this pluralism and interminable state of modern morality is that an emotivism offers an account of all value judgments. Emotivism propounds that all moral judgments are nothing but expression of preference, attitude or feeling. People use moral judgments not only to express their own feelings and attitudes, but to produce the same effect in others.[8] MacIntyre argues against emotivism,[9] but notes even if it is a faulty account of the meaning of moral utterances, analytical philosophy cannot provide a convincing escape from emotivism as a theory of use.[10]

In response to the moral condition of our modern culture, MacIntyre offers two theoretical alternatives for anyone trying to analyse it, Aristotle or Nietzsche.[11] In the opposition between the Aristotelian tradition and liberal individualism, we lack any coherent rationally defensible statement of a liberal individualist position. MacIntyre also argues the Aristotelian tradition can be restated so that it restores

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[6] Ibid., 2. MacIntyre claims that philosophical analysis will not help in achieving the necessary shift in viewpoint which enables us to see our incapacity to use moral language, be guided by moral reasoning and define our interactions with others in moral terms.
[7] Ibid., 226.
[8] Ibid., 11-12.
[9] Ibid., 12-22.
[10] Ibid., 21.
[11] Ibid., 110.

intelligibility and rationality to our moral and social attitudes and commitments.[12] For MacIntyre,

> If a pre-modern view of morals and politics is to be vindicated against modernity, it will be in *something like* Aristotelian terms or not at all.[13]

The breakdown of Aristotelian values, contributes to the fragmented state of modern morality.[14]

Another flaw in modern morality is its focus on human rights, according to MacIntyre. He identifies "rights" as

> ...those rights which are alleged to belong to human beings as such and which are cited as a reason for holding that people ought not to be interfered with in their pursuit of life, liberty and happiness.[15]

He does not mean those rights conferred on specific classes of people by positive law or custom.[16] He argues against human rights, particularly Alan Gewirth's portrayal, stating

> It is first of all clear that the claim that I have a right to do or have something is a quite different type of claim from the claim that I need or want or will be benefited by something. From the first...it follows that others ought not to interfere with my attempts to do or have whatever it is, whether it is for my own good or not. From the second it does not. And it makes no difference what kind of good or benefit is at issue.[17]

Rights, unlike claims to goods, presuppose social rules which only exist in a particular historical time and circumstances. MacIntyre argues, "they are in no way universal features of the human condition."[18] In one of his strongest statements against human

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[12] Ibid., 259.
[13] Ibid., 118.
[14] Ibid., 110-11, 118. The importance of the Aristotelian tradition is because MacIntyre claims a great part of modern morality is intelligible only as a set of fragmented survivals from that tradition, and the rejection of the Aristotelian tradition was a rejection of a distinctive kind of morality where rules, predominant in modern conceptions of morality, are placed in a larger scheme in which the virtues are central (257).
[15] Ibid., 68-9.
[16] Ibid., 68.
[17] Ibid., 66-7. See Alan Gewirth, *Reason and Morality*, (Chicago: University of Chicago Press, 1978). For a further analysis of MacIntyre's dialogue with Gewirth see pp. 176-8.
[18] Ibid., 67.

or natural rights, MacIntyre states there are no such rights,[19] they are "fictions"[20] and "belief in them is one with belief in witches and in unicorns".[21] He claims the best reason for arguing there are no such rights is that every attempt to give good reasons for believing in them has failed.[22] In discussing and arguing against rights MacIntyre distinguishes between them and need, want or benefit.[23]

In exploring the background and context for modern morality, MacIntyre opposes liberal individualism and human rights, supports Aristotelian values and investigates other moral traditions.

Historical Roots and Traditions

For MacIntyre, a tradition is an argument extended through time in which fundamental agreements are defined and redefined regarding external and internal debates which express the meaning and rationale of these agreements. Traditions can be destroyed, fragmented, or connected.[24]

MacIntyre claims a person is largely what he/she inherits from his/her tradition and history.[25] What sustains versus destroys traditions is primarily the exercise or lack of exercise of the relevant virtues, i.e. justice, truthfulness, courage and the intellectual virtues.[26] A living tradition is an historically extended, socially embodied argument, which is partly about the goods which constitute it.[27] Thus, the

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[19] Ibid., 69.
[20] Ibid., 70.
[21] Ibid., 69. MacIntyre's opposition to human rights may be paralleled to the opposition to rights found within the ethics of care. Cf. Gilligan and Noddings, chapter 1 and p. 42.
[22] Ibid., 69.
[23] See pp. 196-8.
[24] MacIntyre, *WJWR*, 12.
[25] MacIntyre, *AV*, 221. History is such that the tradition through which a practice is transmitted and reshaped never exists in isolation from larger social traditions (222).
[26] Ibid., 221-3. MacIntyre claims that to acknowledge this situation is to recognise an additional virtue, that of having an adequate sense of the traditions to which one belongs or which confront one.
[27] Ibid., 222.

individual's search for good or goods is "generally and characteristically" defined by those traditions of which his/her life is a part.[28]

MacIntyre also investigates specific traditions. He argues that Aristotle is the protagonist against which he places liberal modernity. Aristotle's account of the virtues has a central place in MacIntyre's theory.[29] For Aristotle, the city-state, or *polis*, is the unique political form in which the virtues of human life can be genuinely and fully exhibited.[30] MacIntyre notes a specific context for exercising the virtues.[31]

MacIntyre claims Thomas Aquinas extends and disagrees with Aristotle.[32] For Aquinas, the precepts of natural law are the expression of divine law as apprehended by human reason.[33] This single most important experience of human beings in relation to divine law is disobedience to it, which can be remedied only by grace.[34]

Regarding natural law, Marcus Tullius Cicero claims "true law is right reason in agreement with nature".[35] He discusses the connection between natural law and morality in relation to "decorum", or fit.[36] Cicero describes "decorum" as modesty, self-control, reasonableness, the calming of the passions and observations of the

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[28] Ibid., 222. This is true of goods internal to practices and those of a single life.
[29] Ibid., 146.
[30] Ibid., 148.
[31] See p. 149. This context may be paralleled to MacIntyre's notion of community.
[32] MacIntyre, *WJWR*, chapter 11, 191-2, 205. Especially in relation to the defects of Aristotle's views on the teleology of human life.
[33] Ibid., 181. Cf. John Finnis, *Natural Law and Natural Rights*, (Oxford: Clarendon, 1992), 23. Regarding natural law, Finnis argues there is a set of practical principles which indicate the basic forms of human flourishing as goods to be pursued and realised, and which are used by everyone who considers what to do. There is a set of basic methodological requirements of practical reasonableness which distinguishes between acts that are reasonable and unreasonable, morally rights or wrong.
[34] Ibid., 180-1. For Aquinas, the crucial elements for human life are the primary precepts of natural law. These include *synderesis*, indelible consciousness that survives in all human beings, and *conscientia*, consciousness of good and evil which can be extinguished (184-6). MacIntyre acknowledges his interpretation of Aquinas differs from other commentators (187-8). For discussion of these terms, see pp. 154-5.
[35] Marcus Tullius Cicero, *De Re Publica*, trans. C. W. Keyes, Loeb Library Classical Ed., (London: Heinemann, 1928), 211.
[36] Marcus Tullius Cicero, *On Moral Obligation*, trans. John Higginbotham, (Berkeley and Los Angeles: University of California Press, 1967), section III.

happy mean.[37] So natural law may be one basis for morality and incorporate some notion of decorum, what is fitting.[38]

MacIntyre investigates histories and traditions and their relation to persons.

Humanity

As any theorist, MacIntyre has a perspective of humanity and how persons are situated in the context of history and society. His perspective emphasises narrative unity and community.

Narrative Unity

Regarding the narrative unity of a human life, MacIntyre's central thesis is that man, in his actions, practice and fictions, is essentially a story-telling animal, and becomes, through his history, a teller of stories that aspire to truth.[39] In understanding what someone else is doing we place an episode in the context of narrative histories, those of the individuals concerned and their settings.[40] MacIntyre defines setting in a relatively exclusive way, as an institution, practice or other milieu. It is crucial that setting has a history within which the histories of individual agents have to be situated. Without the setting and its changes the history of the agent and his changes will be unintelligible.[41] Because we live out and understand our lives in terms of narratives the form of narrative is appropriate for understanding the actions of

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[37] Ibid., 72.
[38] Cf. H. Richard Niebuhr, "The Meaning of Responsibility," in *On Being Responsible*, eds. James M. Gustafson and James T. Laney, (London: SCM Press, 1969), p. 31. Niebuhr argues a fitting action alone is conducive to the good and right. See pp. 237-45.
[39] MacIntyre, *AV*, 215-16. Unpredictability is crucial to and required by the narrative structure of human life.
[40] Ibid., 211.
[41] Ibid., 206. MacIntyre claims we render the actions of others intelligible within a set of narrative histories because action has a basically historical character. Furthermore, to identify an occurrence as an action is to identify it under a type of description which enables us to see it as flowing intelligibly from an agent's intentions, motives, passions and purposes (209).

others.[42] So, narrative structure and setting provide further context for understanding human life and action.[43]

MacIntyre defines the unity of a human life as the unity of a narrative embodied in a single life and a narrative quest, where a quest is always an education as to the character of that which is sought in self-knowledge.[44] According to MacIntyre, "any contemporary attempt to envisage each human life as a whole",[45] as a unity, will encounter social and philosophical obstacles. The unity of a human life becomes invisible when a sharp separation is made between the individual and the roles he/she plays or between "different role...enactments".[46]

MacIntyre's view of persons stresses narrative unity, setting and roles.[47]

Self and Personhood

MacIntyre elaborates on his narrative concept of selfhood, stressing a person is the subject of a history that is his own and has its own peculiar meaning.[48] MacIntyre argues accountability is a key to understanding intelligibility and human action, as a person can be asked for an intelligible account of his/her action, past or present, at any point.[49] MacIntyre states

> ...I am not arguing that the concepts of narrative or of intelligibility or of accountability are *more* fundamental than that of personal identity....The relationship is one of mutual presupposition. It does

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[42] Ibid., 211-2.
[43] For further discussion of setting see pp. 204-5.
[44] Ibid., 218-19. MacIntyre claims without some partly determinate conception of the final *telos*, there could be no beginning to a quest. His view is based on a medieval concept of a quest. He also argues the virtues are to be understood as those dispositions which will not only sustain practice and enable us to achieve the goods internal to practices, but will sustain in us the relevant kind of quest for the good. They will do this by enabling us to overcome the obstacles, i.e. harms, dangers temptations and distractions, we encounter and which will give us increasing self-knowledge and knowledge of the good.
[45] Ibid., 204.
[46] Ibid., 204. If this happens an individual human life appears as nothing but a series of unconnected episodes.
[47] See pp. 215-17.
[48] MacIntyre, *AV*, 217.
[49] Ibid., 209, 217-18. For MacIntyre, the narrative of one life is part of an interlocking set of narratives.

> follow of course that all attempts to elucidate the notion of personal identity independently of and in isolation from the notions of narrative, intelligibility and accountability are bound to fail.[50]

So, the relationship between personal history, identity, intelligibility and accountability is important to MacIntyre.[51]

If people are accountable, there must be a specific context within which it applies. For persons this context is community.

Community

In exploring the notion of community, MacIntyre is strongly Aristotelian.[52] For Aristotle, the *polis* is a political community which has a common project,[53] is the context for the pursuit of goods for humans[54] and the virtues,[55] particularly justice and practical rationality.[56] The virtues are tied to and can be fully exhibited in this political community alone, for Aristotle.[57] A citizen of the *polis* is required to obey and respect the law and recognise the importance of desert.[58]

MacIntyre claims there is a crucial difference in the way liberal individualist modernity and his traditional view the relationship between political community and moral character. For the former,

> ...a community is simply an arena in which individuals each pursue their own self-chosen conception of the good life, and political

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[50] Ibid., 218.
[51] See pp. 222-3.
[52] Cf. Philip Conford, ed., *The Personal World: John MacMurray on Self and Society*, (Edinburgh: Floris Books, 1996), 71. MacMurray states that people become persons within the context of community. See also pp. 217-23.
[53] MacIntyre, *AV*, 156.
[54] MacIntyre, *WJWR*, 107-8.
[55] Ibid., 103. See also *AV*, 147-8.
[56] Ibid., p. 103, 121-2.
[57] MacIntyre, *AV*, 148. MacIntyre notes two types of failure in community. The failure to be good enough, which entails a lack of virtues, or doing positive wrong. These failures are intimately linked as both injure the community, its pursuit of the common good and potentially limit its shared project (151-2).
[58] MacIntyre, *WJWR*, 103-4. MacIntyre acknowledges Aristotle's account of the *polis* is potentially problematic given it is hierarchical, but claims that the best kind of *polis* is one of teaching and learning, not of domination (105-6).

> institutions exist to provide that degree of order which makes such self-determined activity possible.[59]

For MacIntyre, learning to be virtuous and exercising the virtues always happen within a community.[60]

MacIntyre notes the importance of a common project and desert in community, as the context for people to exercise virtues, seek and achieve their good.[61]

Rationality

MacIntyre emphasises practical reasoning, rational inquiry and an Aristotelian notion of practical syllogism.

Practical Rationality and Reasoning

For MacIntyre, in general, each philosophy of practical rationality must be understood as a whole and in terms of its historical context of tradition, social order and conflict.[62] For MacIntyre, practical rationality is one crucial virtue,[63] and he claims "Aristotle's account of practical reasoning is in essentials surely right."[64] This practical reasoning contains the wants and goals of the agent, an assertion about what is good to seek and achieve, the agent's judgment about it, and the action.[65] MacIntyre claims an important virtue in practical reasoning is having an adequate sense of the traditions to which one belongs or which confront one, which manifests

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[59] Ibid., 195.
[60] Ibid., 194-5. MacIntyre specifically criticises the modern individualist views of Rawls and Nozick for excluding an account of human community in which desert could provide a basis for judgments about virtues and injustice (250). See p. 160.
[61] See pp. 217-23.
[62] MacIntyre, *WJWR*, 389-90.
[63] Ibid., 389. It is intertwined with justice, the other crucial virtue. See pp. 157-60.
[64] MacIntyre, *AV*, 161. See also *WJWR*, 145 and chapter 8 where MacIntyre states the truth of Aristotle's central thesis has been confirmed.
[65] Ibid., 161-2.

itself in the capacity for judgment which the agent possesses in knowing how to choose from the relevant maxims and apply them in particular situations.[66]

In contrast, Hume states, "Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them."[67] Hume, like Aristotle, thinks practical reasoning always will be a performance on a particular occasion.[68] The person who aspires to success in satisfying the passions will have to include reasoning about his/her means, ends and passions, and how they relate to each other and to actions, according to MacIntyre.[69]

MacIntyre addresses the problem of conflicting approaches to rationality.[70] When disagreements between views are sufficiently fundamental, as with practical rationality and justice, they will extend to decisions about resolving them.[71] MacIntyre also addresses whether neutral rationality is possible. One problem with a view of rationality which requires divesting oneself from any theory or social relationships,[72] is people disagree about the concept of justice which is rationally acceptable. MacIntyre argues neutral rationality is faulty and not possible.[73]

Rationality not only involves a practical element in applying relevant rules to situations, but also a level of rational inquiry.

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[66] Ibid., 223. This capacity is linked to the virtue of wisdom. See p. 163.
[67] MacIntyre, *WJWR*, 304. See David Hume, *A Treatise Of Human Nature*, ed. L. A. Selby-Bigge, (Oxford: Clarendon Press, 1967), II, iii, 3. For Hume, the role of practical reasoning is to answer questions which the passions provoke regarding the existence and nature of things which the passions move people to obtain, and the actions and characteristics people want to do or be. Reason also may prescribe the means for the achievement of such ends and judges those means as more or less efficient.
[68] Ibid., 304.
[69] Ibid., 305-6. He argues Hume and Aristotle differ in their views of the relationship of reason to the passions, the nature of the standards for correcting the passions, and the structure of practical reasoning. One similarity is that both present an account of practical rationality in which the individual who reasons rightly does so *qua* member of a political society, not just *qua* individual human being (321).
[70] Ibid., chapters 1 and 20.
[71] Ibid., 4.
[72] Ibid., 3.
[73] Ibid., 3-4.

Rational Inquiry

MacIntyre argues that the concept of rational inquiry is inseparable from the intellectual and social tradition in which it is embodied. He emphasises four points to avoid misunderstanding it. First, the concept of rational justification is essentially historical.[74] Second, doctrines, theses and arguments have to be understood in their historical context, but this does not mean that claims to timeless truths are not being made.[75] Third, once the diversity of traditions has been properly characterised, a better explanation of this diversity is given than the Enlightenment provides.[76] Finally, it is crucial that the concept of tradition-constituted and constitutive rational enquiry cannot be elucidated apart from its exemplifications.[77] So, rational inquiry involves a historical context, truths, diversity of traditions as well as specific accounts of rationality.

Practical Syllogism

MacIntyre explores one specific form of rationality, namely practical syllogism.[78] It involves a Major Premise, where the agent declares what good is at stake in his acting, or not acting, as he should. A Minor Premise is where the agent

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[74] Ibid., 8.
[75] Ibid., 9. He claims given the diversity of traditions of enquiry with histories, there will be rationalities not rationality.
[76] Ibid., 9-10. MacIntyre claims the acknowledgement of the diversity of traditions of enquiry does not mean the differences between rival and incompatible traditions cannot be resolved rationally. From the standpoint of traditions of enquiry, the problem of diversity is not abolished, but transformed to render it amenable to solution. Yet, MacIntyre's optimism may be dubious, particularly as he does not explain how such a transformation occurs.
[77] Ibid., 10.
[78] Ibid., 129. In discussing Aristotle's notion of practical rationality, MacIntyre notes that Aristotle never used the term, but commentators do use it to describe the form of deductive reasoning which immediately precedes and generates action.

declares the situation in which action is required, given this good is at stake. The conclusion which follows from these premises is the required action.[79]

For MacIntyre, every practical syllogism is a performance by a particular person on a particular occasion. So, its soundness depends on the occasion and who utters it.[80] The good will provide the agent's action with a *telos* (end or purpose), and will be the immediate *arche* (beginning), ultimate first principle and concepts, of his next performed action.[81] When premises have been affirmed, they must afford sufficient reasons for the immediate performance of the action, if they are true, the inference valid and the agent fully rational. There is no logical room for something else to intervene, i.e. a decision.[82] If nothing hinders the conclusion, yet the agent does not act immediately, then he must not be fully rational. For *something* contingent and accidental from the standpoint of rationality *must* have intervened, according to MacIntyre.[83]

MacIntyre continues the discussion by comparing this description of the rational agent with modern thought, claiming the former is at odds with the latter. For him, in modernity no set of practical reasons, however compelling, need be treated as conclusive.[84]

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[79] Ibid., 129. MacIntyre cites Aristotle in *De Anima* 343a 16-21, *De Motu Animalium* 701a 7-25, *Nichomachean Ethics* 1146b 35-1147a7 and 1147a 25-31.
[80] Ibid., 129. MacIntyre cites Aristotle in *Nichomachean Ethics* 1112a 18-1113b 14.
[81] Ibid., 131-2.
[82] Cf. For Socrates to know what is good and right is to do it.
[83] MacIntyre, *WJWR*, 139-40. MacIntyre does not seem to recognise that the weakness of the will, *akrasia*, may contribute to an agent failing to act. Also, he assumes *ceteris paribus*, but other things may not be equal.
[84] Ibid., 140. MacIntyre claims that the difference between an Aristotelian and modern view of conflict resolution and practical reasoning is most apparent in reference to interpretations of tragedy. In the modern view, it can be held that the agent should do something, because one good requires it, and simultaneously should refrain from doing it, because another good requires such restraint. The key for MacIntyre is if both these statements can be true, then the concept of truth has been transformed. It is not the truth as transmitted in valid deductive arguments. For this reason, from the Aristotelian view, the apparent existence of a tragic dilemma always must rest on one or more misconceptions or misunderstandings. For "the apparent and tragic conflict of right with right arises from the inadequacies of reason, not from the character of moral reality" (140-2).

A practical syllogism involves rational assessment of the agent's good, the specific situation or context, and an end or action.

Action

The nature of action entails causes and motivations and what constitutes rational, good and just actions.

Causes and Motivations for Action

MacIntyre briefly states a cause is always something that makes a difference in an outcome. Reasons for action, good or bad, are causes when they are effective in guiding action.[85] Causes, as well as motivations, help explain actions. MacIntyre discusses Aquinas' perspective on motivations, which involves *intentio*, *conscientia* and *synderesis*. *Intentio* is when the intellect first judges some end good and an act of will toward the end is elicited. It may be directed at the immediate end or be a means to a further end.[86] *Synderesis* is the natural disposition exhibited in our most basic apprehension of those precepts which we do not comprehend as a result of enquiry if only because a knowledge of their truth is already presupposed in all practical activity.[87] *Conscientia* is the name applied to the following capacities, for Aquinas.[88]

> The application of fundamental principles to a particular situation requires an additional set of capacities, both that involved in deducing from the universal and general fundamental principles more specific

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[85] Ibid., 24. In judging actions good or bad, MacIntyre relies on Aquinas' four criteria. A person must judge an activity good with respect to the kind of activity it is. An activity is morally good insofar as a person only uses resources which are his/her own to use, no harmful consequences ensue *per accidens*, and its cause is the relevant kind of goodness in the individual carrying out the activity. Aquinas specifies for an action to be judged good it must be so in all four ways, but to be bad it need be defective in only one way (194-5). MacIntyre cites Aquinas in *Summa Theologiae* Ia-IIae, 18, 4. Yet, MacIntyre does not seem to recognise the difficulty with predicting and/or controlling the consequences of an action in this discussion.

[86] MacIntyre, *WJWR*, 190. MacIntyre cites Aquinas in *Summa Theologiae* Ia-IIae, 12, 1-4.

[87] Ibid., 184-5. MacIntyre cites Aquinas in *Quaestiones Disputatae de Veritate* 16, 15.

[88] Ibid., 185. MacIntyre notes *conscientia* can be in error, while *synderesis* is infallible.

> principles, with more immediate application to specific types of situation, and that involved in deriving from both of these principles the particular practical judgments about what is to be done here and now or in some particular circumstances which may some day be...[89]

MacIntyre notes the importance of general principles being applied to specific situations and contexts through a person's judgment.[90]

Regarding motivation, MacIntyre discusses views of the will. Hume closely connects the will to passions.[91] The exertion of the will is an effect of that pain or pleasure which immediately gives rise to the direct passions, and it is that which immediately precedes an action.[92] For Augustine the human will, not the intellect, is the ultimate determinant of human action.[93] The will is anterior to reason.[94] In contrast, for Aquinas the will is always moved to action by intellect not necessity.[95] It is always free and open to alternative contingent judgment. The focus of the will is *prohairesis*, or choice, meaning that which comes from deliberation and expresses the agent's conclusion as to what it is good for him/her to do as an immediate means to the ends being considered.[96] Furthermore, the will must consent to the means judged appropriate by the intellect through deliberation.[97]

The role of judgment, the passions, intellect, will and reason have been examined as causes and motivations for action. Rationality and justice also impact human action.

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[89] Ibid., 185.
[90] See pp. 237-45.
[91] MacIntyre, *WJWR*, 300-1. Hume recognises conflict between calm and violent passions. See Hume, *Treatise on Human Nature*, II, iii, 3.
[92] Ibid., 300. MacIntyre cites Hume, *A Treatise on Human Nature*, I, i, 4.
[93] Ibid., 156-7. MacIntyre notes Augustine affirms both the necessity of grace for the redirection of the will and the necessity of the will's freely assenting to the divine grace. For Augustine, the fundamental virtue, humility, is a virtue of the will and its returning to freedom, just as the fundamental human vice, pride, is the will in its self-enslaved condition.
[94] Ibid., 156.
[95] Ibid., 190.
[96] Ibid., 189. MacIntyre cites Aquinas in *Commentary on Ethics* VI, lecture 2.

Rational and Just Action

In discussing the nature of and criteria for rational and just actions, MacIntyre relies on Aristotle's account, which emphasises their role in the good life for humans.

MacIntyre claims for Aristotle the three criteria needed for a practically rational action are: a person must be moved by a belief about what it is best for him to achieve here and now; this belief must be rationally well-grounded and supported by good reasons; and the individual needs some conception of what is good for him/her.[98] So, some form of justification is required for actions to be deemed rational.

MacIntyre also addresses just actions. For Aristotle, just acts are among those the virtuous want to perform for their own sake and the part these acts play in "constituting and effecting the good life for humans beings."[99] MacIntyre argues being just is taken to be a condition of achieving any good and it requires caring about and valuing being just, even when it leads to no further good.[100] As some actions by nature are unjust to perform, an action should be performed because it is just, inherently good and not simply one preference of a virtuous person.[101]

Actions require rational justification and should be inherently just. These actions contribute to the good for humans. MacIntyre's view of rationality is closely linked to the virtue of justice.

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[97] Ibid., 189-91. MacIntyre cites Aquinas in *Summa Theologiae* Ia-IIae, 15, 1.
[98] Ibid., 125. From this conception of the good a person is then able to reason about what is best to achieve in the particular situation for Aristotle. See *Metaphysics*, 2, 1029b5-7 and *Nichomachean Ethics*, 1129b4-6.
[99] Ibid., 112-13. The reasons Aristotle gives for error in action are immaturity or lack of education. These errors cause people to exhibit intellectual limitations in reasoning about what to do. Another type of person fails because his passions are not yet under his rational control or because his knowledge of what is good is not brought to bear on them. This person is incontinent, or *akratic*, while the continent person is *enkratic*. See MacIntyre, *WJWR*, 127-8 and *Nichomachean Ethics*, 1093a2-10, 1095b 4-6, 1179b 23-9, 1179b 26-7, 1146b31-1147a 24.
[100] Ibid., 112-13.

Justice

Examining MacIntyre's perspective of justice involves definitions and different historical perspectives, primarily Aristotelian which focuses on desert.

Historical Perspectives

MacIntyre states justice requires that we treat people based on merit or desert according to impersonal, uniform standards. To depart from these standards in a specific instance is to define our relationship with a particular individual as special or distinctive.[102] MacIntyre aligns himself closely with Aristotle in basing justice on desert,[103] giving it a key position among the virtues,[104] and necessarily linking it to practical reasoning.[105]

For MacIntyre, part of the background of the concept of justice is that we inherit from the conflicts of the social and cultural order of the Athenian *polis* a number of mutually incompatible and antagonistic traditions regarding justice. The Homeric term *dike* has been translated as "justice" and to be *dikaios* was to act in accordance with the single fundamental order of the universe.[106] MacIntyre

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[101] Ibid., 113. MacIntyre notes for Aristotle people become just by first performing just acts.
[102] MacIntyre, *AV*, 192.
[103] MacIntyre, *WJWR*, 104. See *Nichomachean Ethics* 1131a 24-9.
[104] Ibid., 106. Cf. Aquinas who agrees with Aristotle that every virtue is exercised in conformity to a mean, but does not agree that justice is virtue midway between two vices. Justice can be opposed by giving someone either more or less than what is his/her due, and herein the standard of the mean can be discerned. Injustice is a single-minded vice, namely being deliberately disposed to oppose what justice requires (204). See also *Summa Theologiae* IIa-IIae, 64, 2 and IIa-IIae, 59.
[105] Ibid., 103, 389. MacIntyre states each conception of justice requires a conception of practical rationality as its counterpart, and vice versa. For Aristotle, justice in its fullest proper sense is exercised between and governs only the relationships of free and equal citizens within a *polis* (169).
[106] Ibid., 13-15. MacIntyre notes this Homeric view of the universe involved an order of both nature and society, so the modern distinction between natural and social cannot be expressed in it. *Agathos* was to do well what one's role requires, or "good", while *arete*, the corresponding noun, came to mean "excellence" or "virtue".

Cf. Aristotle who refers to *dikaiosune*, in general, as everything which the law requires for the exercise of all the virtues by each citizen. In specific, it is the virtue of justice. Aristotle propounds that each virtue has two corresponding vices. For *dikaiosune* they are acting to aggrandise oneself, whether deserved or not, and acting so as to suffer injustice voluntarily and undergoing undeserved harm or less than one's deserved good (103, 111). See *Nichomachean Ethics* 1129b 9.

emphasises that *dike* and practical reasoning are related conceptually.[107] Furthermore, justice names a virtue, as good practical reasoning requires virtues in those who exhibit it.[108]

MacIntyre contrasts Homeric notions of justice with injustice. Justice as fairness involves an equality of tasks and standards in evaluating rival competitors within fair competition. Injustice, or unfairness, not only impedes the making of true evaluative judgments, but may furnish a means where the less excellent can defeat the more excellent on occasion.[109]

After initially exploring MacIntyre's definition of justice, involving desert, merit and fairness, historical perspectives raises the necessity of comparing different theories of justice.

Different Theories of Justice

MacIntyre discusses rival theories of justice, and further examination of them includes their definitions, different types of justice, and the connection between justice and the virtues.

MacIntyre argues that underlying the wide diversity of judgments regarding what justice requires and permits are a set of conflicting conceptions about justice.[110] These include the theories of Aristotle,[111] Aquinas,[112] Augustine[113] and Hume,[114]

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[107] Ibid., 23. Neither are understood adequately apart from the larger conceptual scheme from which it draws its distinctive character.
[108] Ibid., 23.
[109] Ibid., 28. MacIntyre draws on the Homeric distinction between excellence and winning regarding justice and injustice. Cf. Augustine who believed the full intellectual apprehension of the timeless form of justice, which is the measure of right action, was not sufficient by itself to generate right action. We need to direct our love toward justice which perfectly embodies that form of justice and its actions. This is achievable only when our love is directed toward the life of Jesus Christ (154).
[110] MacIntyre, *WJWR*, 1.
[111] Ibid., chapter 7. See also MacIntyre, *AV* chapters 9 and 12.
[112] Ibid., chapter 11.
[113] Ibid., chapter 9. See especially pp. 152-5.
[114] Ibid., chapter 16. See especially pp. 306-10.

covering ideas of justice ranging from the central concept of desert[115] to inalienable human rights,[116] the social contract[117] and standards of utility.[118] These rival theories raise disagreements about the relationship of justice to other human goods, the kind of equality justice requires, a range of transactions and persons to which considerations of justice are relevant, and whether a knowledge of justice is possible without a knowledge of God's law.[119] So justice involves human goods, equality, persons and situations.

In deciding between these rival and incompatible accounts of justice, MacIntyre suggests we may accept the standards of justice guided by those of rationality. For in learning what rationality requires of us in practice, we discern and know what justice is.[120] MacIntyre notes Aristotle's distinction between corrective and distributive justice, [121] the latter entailing the application of a principle of desert to situations.[122]

Regarding desert, MacIntyre notes Aquinas defines *ius*, or justice, as what is rightly owed to another in accordance with the natural or positive law.[123] *Iustitia* names both the virtue of living by the norms which define the relationships of each person to others, exhibiting in one's disposition a constant will to render to each what is due him, and the standard of right required of each and owed to every human

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[115] Ibid., chapter 7. See especially pp. 104-7.
[116] MacIntyre, *AV*, 247-8.
[117] Ibid., 246-52, especially 251. Cf. Rawls' social contract theory of justice in *TJ* chapter 3.
[118] Ibid., 251-2.
[119] MacIntyre, *WJWR*, 1. See also chapter 11, especially p. 198.
[120] Ibid., 2. He notes this may be difficult as debates about the nature of rationality are as manifold and intractable as those about justice.
[121] MacIntyre *WJWR*, 103-4.
[122] Ibid., 106-7. For Aristotle, justice is valued for its own sake and for that of the *telos*, because it enables us to avoid those vicious states of character incompatible with that kind of life which is best for humans to live. It enables us to act according to a mean, or middle state between two extremes of vice (111). See *Nichomachean Ethics* 1006b 36-1107a 3.
[123] Ibid., 199. MacIntyre cites Aquinas in *Summa Theologiae* IIa-IIae, 67-71.

being.[124] For Aquinas, distributive justice is satisfied when each person receives in proportion to his/her contribution, or receives his/her due.[125]

MacIntyre critiques Rawls and Nozick for the absence of the notion of desert in their theories of justice.[126] Nozick supports entitlement, where principles of just acquisition and entitlement set limits to redistributive possibilities,[127] and Rawls propounds just distribution, where principles set limits to legitimate acquisition and entitlement. For Nozick, justice is based on what a given person is entitled to in relation to what he has justly acquired and earned either through original acquisition or just acts of transfer. For Rawls, justice focuses on the equality of the claims of each person in respect of basic needs and the means to meet them. Because neither principle is socially or politically neutral, and since their underlying frameworks and approaches are vastly different, rationally settling disputes may be difficult, according to MacIntyre.[128]

In describing justice, MacIntyre focuses on desert, recognises fairness and equality may have a role, notes corrective and distributive forms, and connects it to practical reasoning. For him, justice is a key virtue.

Virtues

Investigation of MacIntyre's view of the virtues includes their nature, definitions and descriptions, relation to practice and rules, and alternative conceptions.

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[124] Ibid., 198-9. MacIntyre cites Aquinas in *Summa Theologiae* IIa-IIae 57-8. Cf. Hume who centres the problem of justice around the rules of property and their enforcement. He states a regard for justice is not among the natural sentiments of humanity but arises from artifice and human convention. See Hume, *A Treatise on Human Nature*, III, ii, 2 and 5.
[125] Ibid., 199. MacIntyre cites Aquinas in *Summa Theologiae* IIa-IIae, 61-6. For Aquinas justice also requires no wrong be committed
[126] MacIntyre, *AV*, 246-52. See also chapter 3.
[127] It could be argued that Nozick's view of justice as entitlement is based on desert.
[128] Ibid., 245-6.

Nature of the Virtues

For MacIntyre the search for a core conception of the virtues is crucial, but he claims there are a number of rival theories.[129] For example

> Homer, Sophocles, Aristotle, the New Testament and Medieval thinkers differ from each other in too many ways. They offer us different and incompatible lists of the virtues; they give a different rank order of importance to different virtues; and they have different and incompatible theories of the virtues....It would be all too easy to conclude that there are a number of rival and alternative conceptions of the virtues, but, even within the tradition which I have been delineating, no single core conception.[130]

MacIntyre argues without the necessary basis for agreement about justice and political community there is an inability to agree upon a catalogue of the virtues, their relative importance, as well as the content and characters of particular virtues.[131]

In spite of his claim that no core conception of the virtues may be evident, MacIntyre notes each of the five moral accounts makes a claim for universal allegiance.[132] Furthermore, MacIntyre argues a core conception of the virtues can be

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[129] MacIntyre, *AV*, 181. For Aquinas the four cardinal virtues are prudence, justice, temperateness and courage. See MacIntyre, *WJWR*, 197 and Aquinas in *Summa Theologiae* Ia-IIe, 61, 2.
[130] Ibid., 181. He also offers three different historical concepts of virtue from five thinkers. The Homeric idea of virtue is a quality which enables an individual to fulfil his social role. For Aristotle, Aquinas and New Testament thinkers a virtue is a quality which enables an individual to move towards the achievement of the specifically human *telos*, whether natural or supernatural. While for Benjamin Franklin a virtue is a quality which has utility in achieving earthly and heavenly success (184-5).
MacIntyre provides only a passing reference to why he uses Franklin, as he disappears from the discussion rapidly. Perhaps it is because of Franklin's moral theory, with its emphasis on the "mundane virtues". See Ralph Ketcham, "Benjamin Franklin," in *The Encyclopedia of Philosophy*, vol. 2, ed. Paul Edwards, (London and New York: Macmillan), 220-1.
[131] Ibid., 244.
[132] Ibid., 186. MacIntyre's reference to "five moral accounts" here may mean those of Homer, Aristotle, the New Testament thinkers, Aquinas, and Franklin as he refers to them on the previous page of his discussion. Yet, in the beginning of the chapter he cites Homer, Sophocles, Aristotle, New Testament and Medieval Thinkers. So his reference to the accounts which claim universal allegiance may be unclear.

discovered. A key feature is it always requires, in its definition and explanation, the acceptance of some prior account of features of social and moral life.[133]

In describing his core view of virtue, MacIntyre initially claims

> A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goods.[134]

He later states

> For since a virtue is now generally understood as a disposition or sentiment which will produce in us obedience to certain rules, agreement on what the relevant rules are to be is always a prerequisite for agreement upon the nature and content of a particular virtue.[135]

Furthermore, MacIntyre argues there are three stages in the development of the concept of virtue, including an account of a "practice", the narrative order of a human life, and what constitutes a moral tradition.[136]

Regarding the first stage, MacIntyre suggests the Aristotelian notion of practice provides grounds for the virtues to be exhibited, their primary definitions received, and is crucial to identifying a core concept of the virtues.[137] By "practice" MacIntyre means

> ...any coherent and complex form of socially established co-operative human activity through which goods internal to that form of activity are realised in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.[138]

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[133] Ibid., 186. For example, in the Homeric tradition the concept of virtue is secondary to a social role, for Aristotle it is secondary to the good life for man, conceived as the *telos* of human action, and for Benjamin Franklin virtue is secondary to utility, according to MacIntyre.
[134] Ibid., 191. Cf. notions of vice which MacIntyre discusses (154, 204-5).
[135] MacIntyre, *AV*, 244. He claims this prior agreement in rules is something which modern individualist culture is unable to secure.
[136] Ibid., 186-7. MacIntyre claims each stage has its own conceptual background and each later stage presupposes the earlier stages, but not vice versa.
[137] Ibid., 187.
[138] Ibid., 187. As examples, MacIntyre states tic-tac-toe and bricklaying are not, while the game of chess and architecture are practices.

This notion of "practice" is important to MacIntyre's view of a virtue.[139] Since a practice requires a certain kind of relationship between those participating in it, the virtues are those goods by reference to which we define our relationship to others with whom we share the purposes and standards which inform practices.[140]

MacIntyre acknowledges similarities and differences between his and Aristotle's core conceptions of virtue.[141] The most notable difference is MacIntyre locates the point and function of the virtues in practices. While Aristotle locates their point and function in a whole human life which can be termed good.[142] MacIntyre argues a human life only informed by the conception of the virtues thus far would be defective. First, it would contain too many conflicts and too much arbitrariness. Second, without a conception of the *telos* of a whole human life a conception of individual virtues remains incomplete.[143] Third, integrity or constancy is a virtue which cannot be recognised at all without reference to the wholeness of a human life.[144]

Further examination of different views of the virtues is necessary.

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[139] Ibid., 187.
[140] Ibid., 191.
[141] Ibid., 197-9. MacIntyre's claims his conception of virtue is Aristotelian in three ways. It requires for its completion a cogent elaboration of those distinctions and concepts which Aristotle's account requires, namely voluntariness, the distinction between intellectual and character virtues, the relationship of both to natural abilities and passions, and the structure of practical reasoning. Second, it can accommodate an Aristotelian view of pleasure and enjoyment, whereas it is irreconcilable with any utilitarian view. Third it links evaluation and explanation in a characteristically Aristotelian way.
[142] Ibid., 201. Two other differences MacIntyre notes are although his account is teleological, it does not require allegiance to Aristotle's metaphysical biology, and just because of the multiplicity of human practices and consequently of goods in the pursuit of which the virtues may be exercised conflict will not spring only from the flaws in individual character (196-7).
[143] Ibid., 202.
[144] Ibid., 203.

Different Views of the Virtues

MacIntyre states Aristotle's account of the virtues is central to his theory.[145] For Aristotle, *phronesis*, exercising judgment in particular cases, is a central and an intellectual virtue without which none of the virtues of character can be exercised.[146] MacIntyre claims in Aristotle's view, excellence of character and intelligence cannot be separated, as one cannot possess any of the virtues of character in a developed form without possessing all the others.[147]

MacIntyre notes that some activity is not rule-governed.[148] For Aristotle, *phronetic* activity is not rule-governed, and are no rules for generating this kind of practically effective understanding of particulars.[149] Aquinas also held there are no rules for applying rules, as there is uncertainty and variation in moral matters, despite their universal aspects. So, judgment regarding individual cases must be left to the *prudentia*, or *phronesis*, of each person,[150] as without it judgment and action in particular situations are resourceless beyond the bare level of what *synderesis* provides.[151] So, there may be no general rules for applying rules, highlighting the need for practical judgment.

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[145] MacIntyre, *AV*, 146.
[146] Ibid., 154.
[147] Ibid., 155. MacIntyre cites Aristotle in *Nichomachean Ethics* 1145a. MacIntyre claims this inter-relatedness of the virtues explains why they do not provide a number of distinct criteria to judge an individual's goodness, but one complex measure. MacIntyre also acknowledges applying this measure in a community whose shared aim is the realisation of the human good presupposes a wide range of agreement on goods and virtues, and it is this agreement which makes possible the kind of bond between citizens which, for Aristotle, constitute the *polis*.
[148]MacIntyre, *WJWR*, 116-7. MacIntyre considers if *phronesis* were rule-governed in exercising it we might have to apply rules to particular cases and follow rules in applying these rules. These second-order rules would be applied by the exercise of some non-rule-governed capacity or third-order rules. So, either we have an infinite hierarchy of rules or there is some activity which is not rule-governed. Since there are compelling reasons to reject the former, MacIntyre accepts the latter.
[149] Ibid., 116. MacIntyre also claims Aristotle insists there are natural and universal as well as conventional and local rules of justice (*AV*, 150). Furthermore, although Aristotle recognises natural justice, he claims everything in justice is susceptible to variation, whether natural or conventional. As human beings differ in their formulation of rules of justice, there is no universal formulation of any such rule, except among the gods (*WJWR*, 121). See *Nichomachean Ethics* 1134b 29-30.
[150] Ibid., 195-6. MacIntyre cites Aquinas in *Commentary on Ethics* II, lecture 2.
[151] Ibid., 196. MacIntyre cites Aquinas in *Summa Theologiae* IIa-IIae, 47, 3 and 6. Aquinas notes that by *prudentia* we understand the relevance of the precepts of natural law to particular situations.

MacIntyre investigates rival theories of virtue, argues a core concept can be found, based on an Aristotelian view including practice, the contribution of virtues to a whole human life, and agreement on standards of justice and political community.[152] For rival theories of virtue, the good is a vital concept. This also is true for MacIntyre.

The Good

In exploring MacIntyre's discussion of the good, we will address his general idea of "the good for man",[153] its relation to human flourishing, types of goods and the role of practice.

The Good and Goods

MacIntyre argues *eudaimonia*,[154] is a complete human life lived at its best and the exercise of the virtues is a necessary and central part of such a life, not a preparatory exercise to secure such a life.[155] MacIntyre argues because this concept is intrinsically tied to the virtues, as they are those qualities which enable an individual

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Furthermore, for him, the right kind of rule-following is not possible without education in the moral virtues because rule-governed actions are genuinely good only as they are expressions of the virtues, and because rule-following itself requires the virtue of prudence (194). See pp. 154-5.

[152] For further discussion of wholeness and community see pp. 215-17, 217-23.

[153] MacIntyre, *AV*, 148-9.

[154] Ibid., 148. Aristotle's definition of *eudaimonia* is the state of being well and doing in well in being well, and man's being well-favoured in relation to the divine. Aristotle argues against identifying the good for man with money, honour or pleasure. See *Nichomachean Ethics*, Book I, sections 4-5.

MacIntyre also notes *eudaimonia* is difficult to translate and can mean blessedness, happiness or prosperity. Cf. W. D. Ross notes it is usually translated as happiness, although this is somewhat unsatisfactory. See W. D. Ross, introduction to *Nichomachean Ethics*, by Aristotle, (Oxford and New York: Oxford University Press), vi-vii. For Aristotle's main discussions of *eudaimonia* see books I and X.

[155] Ibid., 149. For further discussion of flourishing see Douglas B. Rasmussen and Douglas Den Uyl, *Liberty and Nature: An Aristotelian Defense of Liberal Order*, (Peru: Open Court, 1991). Gilbert Harman, "Human Flourishing, Ethics, and Liberty," Philosophy and Public Affairs 12 (1983) : 307-22. D. Z. Phillips, *Interventions in Ethics*, (Albany: Suny Press, 1992). David B. Wong, "On Flourishing and Finding One's Identity in Community," Midwest Studies in Philosophy 13 (1988) : 324-41.

to achieve *eudaimonia*, we cannot characterise the good for man, in Aristotle's framework without referring to the virtues and their exercise.[156]

> A key point for MacIntyre is his provisional conclusion that
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> ...the good life for man is the life spent in seeking for the good life for man, and the virtues necessary for the seeking are those which will enable us to understand what more and what else the good life for man is.[157]

He is concerned with the transformation of the virtues in conception and practice, and its history.[158]

So MacIntyre emphasises the Aristotelian notion of *eudaimonia*, its universal and particular aspects and role in the good for humans. He also is concerned about the role of practice in seeking the good or goods in human life.

Goods in Practice

MacIntyre claims a practice involves standards of excellence, obedience to rules and the achievement of good. Entering a practice means accepting the authority of those standards and the inadequacy of one's own performances as judged by them.[159] Practices can flourish within societies with differing codes but not where the virtues are not valued.[160]

MacIntyre describes the relationship between goods and practice.[161] Internal goods are practice-specific and concern the good of the whole community

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[156] Ibid., 148-9.
[157] MacIntyre, *AV*, 219.
[158] Ibid., 228.
[159] Ibid., 190. MacIntyre also claims that in the realm of practices the authority of both goods and standards operates to rule out all subjectivist and emotivist analyses of judgment.
[160] Ibid., 193. He does acknowledge the possibility of practices being evil, and the difficulty of relating such practices to virtues (199-200).
[161] Ibid., 188-91. He also stresses that a practice is not to be confused with a set of technical skills or institutions. For a distinctive element of practice is the way it transforms the goods and ends which the technical skills serve, by a regard for its own internal goods. He argues institutions are largely and characteristically concerned with external goods, as they use these goods to sustain themselves and the practices they bear. Although there is an intimate connection between practices and institutions, the

participating in that particular practice.[162] External goods are externally and contingently attached to the practice and characteristically objects of competition.[163]

For MacIntyre, community provides the context for evaluative practice. There is a difference between the virtues and a morality of laws and one way to elucidate the relationship between them is to consider what founding a community to achieve a common project and bring about some good involves. Two types of practice are needed: i.e. one which values qualities of mind and character, which contribute to the realisation of their common good, and another which identifies action which would destroy community and impair the good. According to MacIntyre, we need both types of practices because a member of such a community could fail in his/her role by not being good enough or doing positive wrong.[164] MacIntyre differentiates between positive and negative practices and their impact on a community.[165]

MacIntyre recognises the need for standards in practice, achieving the good and providing protection from human inadequacies. The community is the context for exhibiting goods in practice and it can be benefited or destroyed by types of practice.

Conclusion

In examining MacIntyre's theory of justice a number of the themes have been noted. These include the importance of tradition, setting and personal history as part of context. His view of persons recognises the importance of practical rationality, justification and judgments regarding decisions and actions, community,

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former is always vulnerable to the competitiveness of the latter. For MacIntyre, the virtues help practices resist the corrupting power of institutions (193-4). Cf. Rawls who highlights the need to ensure institutions are just. See pp. 90.

[162] Ibid., 188-9, 190-1.

[163] Ibid., 188, 190.

[164] Ibid., 151-2.

[165] This distinction parallels that of positive and negative duties and responsibilities. See pp. 223-9.

accountability, wholeness, the good and human flourishing. MacIntyre's emphasis on the virtues and conflicting approaches to justice, particularly as desert, and rationality also were investigated.

Critique of MacIntyre

After exploring MacIntyre's theories it is necessary to engage with a range of critiques of his views. The analysis offered is not intended to be comprehensive, but to examine MacIntyre on his own terms and highlight areas of import for further investigation within the thesis. Critical analysis will be offered on a more general level, focusing on crucial weaknesses and ambiguities in MacIntyre's view of history and tradition, humanity, justice, the virtues and different philosophies, before critiquing his theory from a middle way perspective.

History and Tradition

MacIntyre stresses the importance of histories and being located in a particular tradition, and critics have taken issue with his claims about both. In regard to MacIntyre's views on history, some general critiques discuss his historicism,[166] traditionalism,[167] and inaccuracy in representing various philosophers and traditions.[168] More specifically, some of these critics have analysed MacIntyre's

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[166] J. B. Schneewind, "MacIntyre and the Indispensability of Tradition," Philosophy and Phenomenological Research 50 (1991) : 168. E. J. Bond, "Could there be a Rationally Grounded Universal Morality?," Journal of Philosophical Research 15 (1990) : 33. Julia Annas, "MacIntyre on Traditions," Philosophy and Public Affairs 18 (1989): 394.

[167] Schneewind, "MacIntyre on the Indispensability of Tradition," 165-8. Annas, "MacIntyre on Traditions," 388-404.

[168] John Horton and Susan Mendus, "Alasdair MacIntyre: *After Virtue* and After," in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, eds. John Horton and Susan Mendus, (Cambridge: Polity Press, 1994), 14. Thomas Nagel, "Agreeing in Principle," London Times Literary Supplement, 8-14 July 1988, 748.

treatment of Aristotle,[169] Kant,[170] Hume[171] and Aquinas[172] and found it to be deficient and inaccurate.

Critics also comment on MacIntyre's view of persons which underlies his tradition and histories.

Flawed View of Humanity

For MacIntyre, a central feature of human beings is the narrative unity their lives do and should possess.[173] Critiques focus on his claims about it[174] and its relation to the virtues.[175]

General critiques highlight the vague content of MacIntyre's view of the good[176] and difficulties with his Aristotelian conception of the "good for man".[177] Furthermore, critics highlight a crucial weakness in MacIntyre's theory, as his view of rules does not provide a means of agreeing common goods or rules and deciding between conflicting goods.[178]

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[169] Bond, "Could there be a Rationally Grounded Universal Morality?," 36. Nagel, "Agreeing in Principle," 748. Peter Johnson, "Reclaiming the Aristotelian Rule" in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, eds. John Horton and Susan Mendus, (Cambridge: Polity Press, 1994), 55-6. Horton and Mendus, "Alasdair MacIntyre: *After Virtue* and After," 7.

[170] Ibid., 36. Nagel, "Agreeing in Principle," 748.

[171] Nagel, "Agreeing in Principle," 748. Annette Baier, "MacIntyre on Hume," Philosophy and Phenomenological Research 51 (1991) : 159-63.

[172] Robert P. George, "Moral Particularism, Thomism, and Traditions," Review of Metaphysics 42 (1989) : 593-605.

[173] See pp. 147-8.

[174] Gregory L. Jones, "Alasdair MacIntyre on Narrative, Community and the Moral Life," Modern Theology 4 (1987) : 53-69. Johnson, "Reclaiming the Aristotelian Ruler," 57-8. Horton and Mendus, "Alasdair MacIntyre: *After Virtue* and After," 9. D. E. Cooper, "Life and Narrative," International Journal of Moral and Social Studies 3 (1988) : 164-7. Schneewind, "Virtue, Narrative, and Community: MacIntyre and Morality," 653-63. For a response to Schneewind see Alasdair MacIntyre, "Intelligibility, Goods, and Rules," Journal of Philosophy 79 (1982) : 664.

[175] Johnson, "Reclaiming the Aristotelian Rule," 57-8. Jones, "Alasdair MacIntyre on Narrative, Community and the Moral Life," 61-2.

[176] Alan Gewirth, "Rights and Values," Review of Metaphysics 38 (1895) : 753, 754. Madigan, "Plato, Aristotle and Professor MacIntyre," Ancient Philosophy 3 (1983) : 178.

[177] Philippa Foot, "Goods and Practices," London Times Literary Supplement 25 Sept. 1982, 1097.

[178] Schneewind, "Virtue, Narrative, and Community: MacIntyre and Morality," 661. Madigan, "Plato, Aristotle and Professor MacIntyre," 176-8. Foot, "Goods and Practices," 1097. For a reply refer to MacIntyre, "Intelligibility, Goods, and Rules," 664-5.

These critiques point to a flawed view of humanity and human good and goods in MacIntyre's theory. A notion of human good is part of understanding morality.

Flawed View of Morality

In addressing more general areas of critique of MacIntyre's morality, some critics explore his notions of political morality,[179] his use of Aristotle and Aquinas,[180] and view of moral vocabulary.[181]

Although MacIntyre recognises the importance of morality, his view of theory and practice,[182] conception of moral truth, particularly regarding objective and subjective meanings,[183] and past and present morality,[184] have been scrutinised. So critics stress the inadequacy of MacIntyre's account of morality.

Important to MacIntyre's perspective of morality and humanity is his theory of rationality.

Flawed View of Rationality

General critiques focus on the lack of clarity in MacIntyre's argument about and definition of practical rationality and, this being a fundamental concept for

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[179] Johnson, "Reclaiming an Aristotelian Ruler," 59-61.
[180] Ibid., 59. Bond comments on MacIntyre's use of Aristotle here in "Could There be a Rationally Grounded Universal Morality?," 34-6.
[181] Stephen Mulhall, "Liberalism, Morality and Rationality: MacIntyre, Rawls and Cavell," in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, eds. John Horton and Susan Mendus, (Cambridge: Polity Press, 1994), 218-19.
[182] Bond, "Could there be a Rationally Grounded Universal Morality?," 34-6.
[183] Mulhall, "Liberalism, Morality and Rationality: MacIntyre, Rawls and Cavell," 218.
[184] Stephen Lukes, "In a New Dark Age?," New Statesman 102 (1982): 18. Bond, "Could There be a Rationally Grounded Universal Morality?," 34. Peter Winch, "Reconstructing a 'good for man'," *The London Times Higher Educational Supplement*, 18 Sept. 1981, 14a. He argues MacIntyre's diagnosis that the primary manifestations of contemporary moral disorder is the widespread and intractable character of disagreement on fundamental moral issues is not a particularly modern problem.

MacIntyre, is especially problematic.[185] Other critics claim MacIntyre's arguments about rationality[186] and justification are not convincing.[187] So MacIntyre's view of rationality seems inadequately stated.

For MacIntyre, rationality is linked closely to justice.

Flawed View of Justice

In exploring MacIntyre's claims and theories about justice, critics take issue with the content of his theory, including his use of Aristotelian justice,[188] both in his inclusions and omissions.[189] Thomas Nagel notes difficulties caused by MacIntyre's omissions regarding social justice.[190] Julia Annas highlights omissions concerning what justice requires, including human and legal rights, injustices, inequalities, and freedoms.[191]

In critiquing specific types of justice, Taylor discusses desert in relation to MacIntyre's Aristotelianism and distributive justice. The basic intuition underlying Aristotle's distributive justice is that in any common attempt to achieve the good, all genuine collaborators benefit from the contribution of others. Some people will contribute more, so mutual debt may not be reciprocal entirely. While we must all

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[185] Winch, "Reconstructing the 'good for man'," 14a.
[186] Annas, "MacIntyre on Traditions," 391-2. Lukes, "Return to a World We have Lost," 36.
[187] Andrew Mason, "MacIntyre on Liberalism and its Critics: Tradition, Incommensurability and Disagreement," in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, eds. John Horton and Susan Mendus, (Cambridge: Polity Press, 1994), 232-6. Mason notes this moral justification is particularly in relation to rival theories and moral beliefs.
[188] Norman Dahl, "Justice and Aristotelian Practical Reason," Philosophy and Phenomenological Research 51 (1991): 153
[189] Annas, "MacIntyre on Tradition," 389. She notes *WJWR* is devoted entirely to the task of description.
[190] Nagel, 'Agreeing in Principle', 747
[191] Annas, 'MacIntyre on Tradition', 389. She notes MacIntyre's view focuses narrowly on notions of desert and distribution, as he believes they are crucial to Aristotelian justice.

share in the good, it is clear that more is owed to these outstanding contributors, in Aristotle's principle of proportional equality.[192]

Taylor states, for MacIntyre, this notion of rightful distribution by desert among associates seems deeply embedded in human consciousness.[193] Taylor suggests part of the confusion in this discussion of mutual indebtedness versus distribution is that the same terms are being used for the "justice" that underlies both distributions. Whereas, in fact, they answer different questions of what type of distribution corresponds to the demands of the highest transcendent good, and what is the balance of indebtedness in our particular community. Taylor summarises the situation by claiming it is absolute versus local justice.[194] Within theories of justice questions of desert are linked to distribution of goods.

Gewirth claims MacIntyre gives no clear answer regarding which further goods people ought to pursue, or distributive goods, but only refers to the *telos* of a whole human life and places the relevant criteria in terms of the needs of community.[195] To deserve well is to contribute substantially to the achievement of these goods, the sharing and pursuit of which provides the foundation for human community. So, an understanding of what MacIntyre means by "human community" is vital for understanding his criteria of merit or desert, and therefore justice.[196] Gewirth asks whether there is any determinate criteria for "merit or desert"?[197] He questions whether an egalitarian conception of community, where persons share equally in the relevant goods, is offered by MacIntyre. Furthermore, Gewirth implies

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[192] Charles Taylor, "Justice After Virtue," in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, eds. John Horton and Susan Mendus, (Cambridge: Polity Press, 1994), 37.
[193] Ibid., 38. Taylor notes MacIntyre claims desert is deliberately set aside by Rawls. See also pp. 159-60.
[194] Ibid., 40.
[195] Gewirth, "Rights and Values," 759-60.
[196] Ibid., 759.

that an egalitarian conception of community may be important both to justice and distribution of goods.[198]

The notion of desert in MacIntyre's theory can be contrasted with the notion of wants and rewards. Dahl argues what people 'want' differs, and the only aim they share is a social context in which they have a relatively fair opportunity to secure their good. Such a conclusion will lead to a conception of justice close to that of effectiveness, not excellence.[199] Dahl's point is that there is no *a priori* basis for expecting one of these conceptions of justice to be better than the other.[200] He also addresses the crucial question of how rewards should be apportioned over different kinds of achievement, in relation to MacIntyre's Aristotelian justice and goods. Dahl claims a failure to provide such a measure deprives people of a shared standard of just apportionment. The only community that could provide this standard is one where human life is structured by a hierarchy of goods, this structure carrying the central features of Aristotelian justice.[201] Desert can be linked to wants, rewards and punishments.

MacIntyre's theory of justice has been critiqued regarding his notions of desert and merit, distribution of goods and community, needs, wants and rewards. Critics also investigate his related theory of virtue.

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[197] Ibid., 759. Gewirth argues if justice is only a virtue of participation in "practices", it shares the relativism or indeterminacy of MacIntyre's practices. See also Mason, "MacIntyre on Liberalism and its Critics: Tradition, Incommensurability and Disagreement," 236.
[198] Ibid., 759. Gewirth notes MacIntyre criticises Rawls and Nozick for having views which exclude any account of human community where desert, in regard to the common task of that community in pursuing shared goods, could provide a basis for judgments about virtue and injustice. Gewirth claims MacIntyre remains vague about how goods are to be recognised in the "shared vision and understanding of goods". He cites *AV*, 233, 240.
[199] Dahl, "Justice and Aristotelian Practical Reason," 155-7.
[200] Ibid., 156-7.

Flawed View of the Virtues

Critics analyse MacIntyre's perspective of the virtues in general, and examine his ideas of the priority of the virtues in contrast to rules, rights and laws.

General criticisms regarding MacIntyre's virtue theory include its content and descriptions.[202] MacIntyre also connects the virtues to practices, and critics have focused on both his definition[203] and content of practice.[204] They note the difficulties of dealing with conflict in or between practices and how these relate to conflict between virtues, from MacIntyre's view.[205]

More specifically, Johnson notes confusion between MacIntyre's definition of the virtues and the conception of need and defence of practical wisdom.[206]

Schneewind argues MacIntyre's theory does not show the virtues are prior to moral rules[207] and, thus, has a problem about the priority of the virtues.[208]

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[201] Ibid., 155. Furthermore, Dahl argues even if Aristotelian practical reason was meant to justify a hierarchy of goods, it still could justify other forms of justice.
[202] Gewirth, "Rights and Values," 752. Schneewind, "Virtue, Narrative, and Community: MacIntyre and Morality," 659-61.
[203] Foot, "Goods and Practices," 1097. Horton and Mendus, "Alasdair MacIntyre: *After Virtue* and After," 10. Elizabeth Frazer and Nicola Lacey, "MacIntyre, Feminism and the Concept of Practice," in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, eds. John Horton and Susan Mendus, (Cambridge: Polity Press, 1994), 265-82. David Miller, "Virtues, Practices and Justice," in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, eds. John Horton and Susan Mendus, (Cambridge: Polity Press, 1994), 255-62. See Alasdair MacIntyre, "A Partial Response to My Critics," in *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, eds. John Horton and Susan Mendus, (Cambridge: Polity Press, 1994), 283-305.
[204] Schneewind, 'Virtue, Narrative, and Community: MacIntyre and Morality', 655-6. Johnson, "Reclaiming the Aristotelian Rule," 55. Foot, "Goods and Practices," 1097. Horton and Mendus, "Alasdair MacIntyre: *After Virtue* and After," 10. Miller, "Virtues, Practices and Justice," 248-9, 252-3.
[205] Schneewind, "Virtue, Narrative, and Community: MacIntyre and Morality," 656. Johnson, "Reclaiming the Aristotelian Rule," 56.
[206] Johnson, "Reclaiming that Aristotelian Ruler," 61.
[207] Ibid., 660. See MacIntyre, *AV*, 208-9. He claims the rules derived from MacIntyre's idea of the common good are only those necessary to allow for common life and co-operation no matter what the aim. So, MacIntyre only can insist people work together to secure the common good, but MacIntyre's position collapses into that which he repudiates as being the core of modernity. Schneewind claims in arguing MacIntyre's virtue-centred theory fails to pass one of his own tests, it fails to provide a real alternative to the morality currently embodied in our culture (661).
[208] Ibid., 661. See MacIntyre, *AV*, 141-3. Cf. Gilligan who highlights the tension between contextual, relational versus abstract, rule-oriented morality. See pp. 5-6.

In analysing the relationship of virtues to rules, Gewirth claims MacIntyre rejects a morality of rights and duties and upholds the virtues instead.[209] When the criteria for a quality's being a virtue does not include the requirement that the virtue reflect or conform to moral rules, there is no assurance the alleged virtue will be morally right or valid.[210] Gewirth argues such moral indeterminacy means a virtue may be both morally right and morally wrong.[211]

Furthermore, Gewirth concludes a crucial difficulty with MacIntyre's whole doctrine is his removal of the virtues from their necessary grounding in human rights.[212] If MacIntyre had made human rights central, he would have avoided the moral indeterminacy which mars the relation of the virtues to practices, the *telos* of whole human lives, and traditions and communities. Thus, MacIntyre's central project is not successful.[213]

MacIntyre's virtue theory has been critiqued regarding its content, priority of moral rules, indeterminacy, lack of grounding in human rights and its relation to his view of practices. Underlying MacIntyre's theory are different philosophies.

Flawed View of Philosophies

Regarding the relation of MacIntyre's theories to philosophies, critics address his opposition to liberalism, individualism and rights, advocacy of communitarianism, and some dangers of relativism.

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[209] Gewirth, "Rights and Values," 751-2. Yet, MacIntyre would not necessarily view this comment as a criticism. Gewirth also claims the centrality of the virtues is a reversal of the traditional conception of the relation between moral virtues and the law, in which moral virtues derive their contents from moral rules. See also pp. 176-8.

[210] Ibid., 752-3.

[211] Ibid., 752. Gewirth argues in MacIntyre's morality of law he tries to counter these charges but fails. Following Aristotle, MacIntyre might respond that he distinguishes between the morality of virtues and law. The morality of law prohibits the doing or production of harm that destroys the bonds of community so that doing or achieving good is impossible. While the morality of virtues requires the moral law as a counterpart (757-8).

[212] Ibid., 762.

Liberalism and Individualism

Critiques address the clarity of MacIntyre's account, characterisation of and charges against liberalism.[214] They also examine MacIntyre's diagnosis of liberalism, draw attention to the diversity and differences within liberalism, and argue it is more complex than MacIntyre realises.[215] Mulhall also highlights MacIntyre's historical diagnosis of and change in position regarding liberalism.[216]

One specific manifestation of liberal individualism is rights.

Rights

One key aspect of modern moral culture is a conception of rights. MacIntyre argues against reliance on human rights and rules within morality,[217] and his claims have been the source of much criticism.

In contrast, Gewirth argues for rights. Because freedom and well-being are the necessary conditions of action, no agent can act to achieve any of his purposes without having these conditions. Gewirth concludes that every agent must accept "I have rights to freedom and well-being", which Gewirth calls *generic rights* because

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[213] Ibid., 760-2. See Gewirth, *Reason and Morality*, 243.
[214] Mason, "MacIntyre on Liberalism and its Critics: Tradition, Incommensurability and Disagreement," 226, 229-30. Horton and Mendus, "Alasdair MacIntyre: *After Virtue* and After," 14. Lukes, "Return to a World we have Lost," 35-6. For a response to Mason, see MacIntyre, "A Partial Response to My Critics," 291-2.
[215] Mason, "MacIntyre on Liberalism and its Critics: Tradition, Incommensurability and Disagreement," 227-8. George, "Moral Particularism, Thomism, and Traditions," 604-5.
[216] Mulhall, "Liberalism, Morality, and Rationality: MacIntyre, Rawls and Cavell," 219-20, 224. Mulhall argues that MacIntyre's position on the weaknesses of liberalism changes from *AV* to *WJWR*. In the former MacIntyre claims the crucial methodological weakness of liberalism is that it claimed to offer a distinctive account of human agency and morality, when it was incapable of doing so, while in the latter he acknowledges liberalism is a fully-fledged tradition and so possessed of the resources he originally suspected it of lacking, according to Mulhall. For a response to Mulhall, see MacIntyre, "A Partial Response to My Critics," 292-3.
[217] See pp. 144-5. Cf. Brenda Almond, 'Rights' in *A Companion to Ethics*, ed. Peter Singer, (Oxford: Blackwell, 1996), 259-69.

they are rights to the generic features of action.[218]

MacIntyre objects to the form and content of Gewirth's argument for proving the existence of human rights.[219] He argues Gewirth's shift from agreeing on necessary goods for exhibiting rational agency to being logically committed to having a right to them is problematic. MacIntyre emphasises that if a person claims a right in virtue of his/her having certain characteristics, then he/she is logically committed to holding that anyone with those same characteristics has that right too.[220]

MacIntyre counters Gewirth's position, stating rights-claims are not 'universal features of the human condition'.[221] Rather they, and their presupposed social rules, only come into existence at particular historical periods under certain social circumstances. Rights-claims have not existed universally in human societies.[222] Furthermore, MacIntyre suggests there is a difference between claiming one has a *right* to something versus one *needs*, *wants* or will *benefit* from it.[223]

In one of his most sweeping claims, MacIntyre states human or natural rights are "fictions" and that "there are no such rights and belief in them is one with belief in witches and unicorns".[224] The primary reason MacIntyre provides to support this claim is "every attempt to give good reasons for believing there *are* such rights has failed."[225]

Gewirth claims MacIntyre's arguments do not prove rights do not exist and he fails to note the extensive work in this area.[226] The phenomenon of human rights can

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[218] Gewirth, "Rights and Values," 744. MacIntyre discusses Gewirth's position in *AV*, 66-70.
[219] Ibid., 742-50.
[220] MacIntyre, *AV*, 66-7. See Gewirth, *Reason and Morality*.
[221] Ibid., 67. See p. 144.
[222] Gewirth, "Rights and Values," 747. See Gewirth, *Reason and Morality*, 98-9.
[223] MacIntyre, *AV*, 67. My emphases. See Gewirth, "Rights and Values," 745.
[224] See pp. 144-5. See also MacIntyre, *AV*, 69-70.
[225] Gewirth, "Rights and Values," 739. See MacIntyre, *AV*, 69.
[226] Ibid., 745-50.

be shown empirically, so they are not "fictions".[227] Gewirth argues that MacIntyre's primary claim against believing in rights is very extensive and sweeping, and not accompanied by the historical evidence needed to support it adequately.[228]

Discussing human rights involves language and they may be expressed in the form of rights claims.[229] Gewirth argues it is unduly conservative to insist, as MacIntyre does, that rights-claims always must presuppose social rules or institutions which already exist.[230] Gewirth argues that the agent's rights-claim is logically prior to and independent of a community or social rules, except in a minimal sense, precisely because it is based on his own needs. Thus, rights-claims are at least sometimes demands that social rules or institutions be established.[231]

Although MacIntyre's opposition to a morality of rights has been the subject of critique, his view accurately notes some dangers of rights-claims. Rights are linked to needs, wants, goods, benefit and may function as minimum rules or standards in a society or community.[232]

Communitarianism

In his opposition to individualistic modernity, MacIntyre's view of community is an important alternative.

Carlos Niño suggests a communitarian position is problematic in its potential support of tribalist or nationalist attitudes and the possibility it may generate a totalitarian vision of society. Furthermore, the view that the social dimension is

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[227] Ibid., 739.
[228] Ibid., 741.
[229] Jon P. Gunnemann, "Human Rights and Modernity: The Truth of the Fiction of Individual Rights," Journal of Religious Ethics 16 (1988) : 162.
[230] Gewirth, "Rights and Values," 746-7.
[231] Ibid., 746-7.
[232] See p. 223.

dominant in a conception of the good may lead to justifying sacrifices of individuals for the sake of promoting a society conceived in holistic terms.[233]

The charges against MacIntyre's particular expression of communitarianism include its vagueness, moral indeterminacy, contradictions[234] and that it falls prey to elements of liberalism.[235]

Gunnemann attacks MacIntyre's idealistic view of past moral communities.[236] He claims MacIntyre assumes that at some time in the past there was a real moral world consisting of his moral communities, as opposed to the fictional moral world of the present. MacIntyre relies on a "once we had it but now we don't argument".[237] The whole of *After Virtue* is an account of the fall from moral community.

Gunnemann states it can be argued that most moral communities of the past had inherent moral limitations which led to their undoing. They were inherently particularistic. This collided with quests for universality.[238] Thus, Gunnemann opposes MacIntyre's idealistic picture of past moral communities and notes tension between the particular and universal, the individual and community.[239]

MacIntyre's communitarianism is too vague, idealistic and shares features with liberal modernity. Critics note it also may be relativistic.

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[233] Carlos S. Niño, "The Communitarian Challenge to Liberal Rights," Law and Philosophy 8 (1989) : 41-2. Rawls notes the latter criticism in relation to utilitarianism. See pp. 101-2 and Rawls, *TJ*, 180-2.
[234] Bond, "Could there be a Rationally Grounded Universal Morality?,"38. Niño, "The Communitarian Challenge to Liberal Rights," 46-7. Gewirth, "Rights and Values," 756.
[235] Ibid., 46-7. Schneewind, "Virtue, Narrative, and Community: MacIntyre and Morality," 662-3. Schneewind claims MacIntyre envisages communities whose key feature is the lack of doubt members will have about their socially given identities and, therefore, will not have to make any decisions about them. Yet, Schneewind's interpretation may be debatable. MacIntyre's communities may be represented as emphasising the virtues and *eudaimonia*. See pp. 149-50, 165-6.
[236] Gunnemann, "Human Rights and Modernity: The Truth of the Fiction of Individual Rights," 162. Schneewind, "Virtue, Narrative, and Community," 662-3. He notes past communities have not always been fair.
[237] Ibid., 162.
[238] Ibid., 162. Particularly the Christian and Enlightenment quests for universality, according to Gunnemann.

Relativism

Critics hold differing opinions as to the degree of relativism of which MacIntyre is guilty.[240] Other critics oppose MacIntyre's perspectives on the place of truth in history,[241] arguing he does not avoid moral relativism.[242]

More specifically, both Nagel and George criticise MacIntyre's particularistic view of tradition.[243] For George, MacIntyre's burden is to retain his particularism while demonstrating that ultimately choices among traditions need not be arbitrary. MacIntyre is unable to support this burden and, in answering the dilemma of how to decide between rival traditions, is evasive. For MacIntyre it depends on who you are and how you understand yourself. This is a deeply unsatisfactory answer, according to George.[244]

Dahl notes MacIntyre claims he is not committed to a form of relativism that maintains the belief that whatever a tradition claims is true. Yet, MacIntyre does not take seriously enough the possibility of more than one successful tradition. If this is possible, then there will be two sets of mutually exclusive claims about justice, for

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[239] Cf. Schneewind, "Virtue, Narrative, and Community: MacIntyre and Morality," 662. He states that MacIntyre's view of modern morality is profoundly pessimistic.
[240] Annas, "MacIntyre on Traditions," 393. George, "Moral Particularism, Thomism, and Traditions," 595-9. For a broader discussion of, and distinction between meta-ethical and normative, relativism, see David Wong, "Relativism," in *A Companion to Ethics*, ed. Peter Singer, (Oxford: Blackwell, 1996), 442-50.
[241] Nagel, "Agreeing in Principle," 748. Bernard Williams, "Messing about with Modern Morality," London Sunday Times, 15 Nov. 1981, 42g.
[242] Horton and Mendus, "Alasdair MacIntyre: *After Virtue* and After," 12. George, "Moral Particularism, Thomism, and Traditions," 598. Cf. Brenda Almond, "Alasdair MacIntyre: The Virtue of Tradition," Journal of Applied Ethics 7 (1990) : 101. Almond argues MacIntyre leaves room for the development of traditions and the possibility of rational inquiry within a tradition, thus distinguishing himself from the relativist.
[243] Nagel, "Agreeing in Principle," 747-8. George, "Moral Particularism, Thomism, and Traditions," 598-600. Nagel argues it is particularistic because MacIntyre claims there are no universal reasons for accepting a tradition of rationality or truth.
[244] George, "Moral Particularism, Thomism, and Traditions," 598-9. See MacIntyre, *WJWR*, 393.

example, both being true. Dahl argues that it is difficult to see how this could occur without truth being relative to a tradition, contrary to MacIntyre.[245]

MacIntyre's theory is critiqued in relation to different philosophies and Rawls' theory.

MacIntyre and Rawls

General comments on the dialogue between MacIntyre and Rawls include critiques of MacIntyre's presuppositions,[246] treatment of textual points about and representation of Rawls.[247] More specific critiques discuss differences between MacIntyre and Rawls' views of justice as fairness, the role of desert, the good life for humans[248] and the individual versus the community.[249]

MacIntyre critiques a Rawlsian society as radically individualistic. Individuals with their own interests formulate common rules out of necessity. Because Rawls gives the individual priority over society, MacIntyre claims Rawls' theory will be unable to accommodate the concept of social justice on which it is predicated.[250] Since the original position encapsulates the idea of individuality prior to community,[251] Rawls' theory is doomed to failure.[252]

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[245] Dahl, "Justice and Aristotelian Practical Reason," 157. Niño, "The Communitarian Challenge to Liberal Rights," 42. See pp. 178-9. Two problems with relativism are that it is self-contradictory and not true. See also E. David Cook, *Dilemmas of Life*, (Leicester: Inter-Varsity Press, 1990), 58-67. Wong, "Relativism," 442-50.

[246] Mulhall, "Liberalism, Morality, and Rationality," 207-11. For further comparison and contrast between MacIntyre and Rawls' ethics of justice see pp. 198-9.

[247] Daniel A. Dombrowski, "MacIntyre, Rawls and the 'Republic'," Philosophical Studies 31 (1986-7) : 63. Mulhall, "Liberalism, Morality, and Rationality," 205-9, 221-2.

[248] Mulhall, "Liberalism, Morality, and Rationality," 210.

[249] Taylor, "Justice After Virtue," 24. Dombrowski, "MacIntyre, Rawls and the 'Republic'," 66. Mulhall, "Liberalism, Morality, and Rationality," 206. Taylor states that MacIntyre critiques Rawls because he has a fundamentally derived notion of the virtues, as they are defined in terms of right. MacIntyre opposes this type of moral theory to that which would begin with and give the virtues a more central place.

[250] Ibid., 206. He cites MacIntyre, *AV*, 232-3.

[251] Ibid., 206

[252] Ibid., 206.

MacIntyre argues Rawls' social contract view of society rules out the notion of human community, and thus desert. When Rawls excludes notions and references to the past he also excludes claims of desert based on past actions and suffering.[253] Rawls makes primary a principle of equality with respect to needs. He claims that the "worst-off" sector is a conception of those with the gravest needs with respect to income, wealth, and other goods. How they come to be in gravest need is irrelevant, for Rawls, and so justice is a matter of present patterns of distribution to which the past is irrelevant.[254] MacIntyre argues Rawls' conception of justice is faulty because of its reliance on the original position,[255] Rawls' conception of need, and most importantly the lack of any notion of desert.[256]

MacIntyre and Rawls differ in their view of society and human beings, being communalistic or individualistic, the good, and justice as equality versus desert.

Conclusion

After investigating general critiques of MacIntyre's theory, strengths and weaknesses of his view of tradition and history, humanity, including narrative unity and the good, morality, rationality and virtues were examined. His communitarianism, relativism and view of liberal individualism, including his opposition to rights claims, were critiqued. Furthermore, different notions of justice, based on desert, needs or wants were analysed.

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[253] MacIntyre, *AV*, 251. Rawls does allow that common sense views of justice connect it to desert, but argues that people do not know what anyone deserved until they have formulated the rules of justice. When these rules are formulated, it is not desert that is in question, but legitimate expectations. Rawls notes that justice as fairness rejects this notion of desert and it would not be chosen in the original position. See Rawls, *TJ*, 310-12.

[254] Ibid., 248.

[255] Ibid., 246-7. MacIntyre cites Rawls, *TJ*, 136. MacIntyre accepts that the rational agent in some such situation as the veil of ignorance would choose some such principle of justice, as Rawls claims. MacIntyre carefully points out that it is only a rational agent in such a situation who would choose such principles.

[256] Ibid., 246-51.

Critique of MacIntyre from a Middle Way Perspective

Traditions and History

MacIntyre accurately recognises the importance of a context, including tradition, personal history and setting, within which individuals function.[257] These elements affect and aid an understanding of individuals and their choices, actions and decisions.[258]

Yet, MacIntyre does not discuss adequately the dilemma of conflicting traditions and provides no clear framework for deciding between them. The implications of this absence are vitally important in a pluralistic society and world where there are numerous conflicting backgrounds, traditions, histories and dilemmas. We need some means of assessing the myriad of options and views which confront us in order to resolve conflict.[259] Without the criteria to judge between competing traditions, we might circumvent the plurality of Western society by attempting to create a new tradition.

There are two primary options. We can look to the past, as MacIntyre advocates, and attempt to revive values or a society that once existed, or we may look within the present for common values we want to encourage. MacIntyre's advocacy of returning to one dominant past tradition to shape contemporary morality is not plausible given the plurality of the present.[260] So, in seeking some consensus, we may

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[257] See p. 147-9. Also MacIntyre, *AV*, 211, 217, 221.

[258] See chapter 5, 6 and 7.

[259] This difficulty may parallel that of deciding between different assessments of what care means, in general or for a particular individual. For example, one person may think the caring action is to allow an elderly relative to struggle to live on her own in order to maintain dignity and autonomy. Another person might believe caring entails moving the relative into an assisted community, preserving safety and her best interests.

[260] This plurality includes not only the ethics of justice, but also the ethics of care. Furthermore, there is a difference between pluralism and relativism. Pluralism offers a sociological description of a way of being in the world where there are a number of difference traditions, cultures and customs existing together in one society. Pluralism can be seen as both a social fact and an individual state of mind.

examine different present traditions for some commonality. This might include areas such as familial relations, sexual morality, health and well-being, and the role of education and work.[261] If general agreement can be reached about the importance of these areas, then structures can be created to encourage the upholding and fostering of this tradition. Education, within schools and families, would play a key role in raising awareness regarding the importance of these areas and these values can be transmitted to the next generation. Furthermore, a community may provide a useful framework for recognising and teaching particular values.[262]

A positive illustration of the fostering of a tradition is related to HIV/AIDS. Before HIV/AIDS became so widespread, discussions of the risks of sexual activity primarily focused on pregnancy and sexually transmitted diseases. When the danger of the sexual transmission of HIV/AIDS was discovered, vast energy was channelled into education and awareness about the risks involved. A result of this concentrated effort to instil a value was that people placed greater value on practising safer sex and altered their behaviour. It is possible to affect people's values and priorities within a pluralistic society. One uncertainty is the degree to which this is possible and the length of endurance of the change.[263]

One of its positive characteristics is tolerance. Relativism also advocates tolerance, but it is a philosophy which underlies pluralism, not a sociology. Relativism claims there are no absolute truths or moral standards. Right and wrong, good and bad are relative to a particular place, time and context. See Trevor J. Cooling, "The Epistemological Foundations of Contemporary Religious Education: A Study with special reference to the Evangelical Christian Tradition" (Ph.D. diss., University of Birmingham, 1992), 159. Cook, *Dilemmas of Life*, 58-67.

[261] Cook, *Dilemmas of Life*, 62. Cook claims common moral areas found in all societies focus on the value and sanctity of human life, parent-children relations, sexuality, property allocation or belonging and truth-telling.

[262] The School Curriculum Assessment Authority is concerned with ways to teach and instil values in schools. E. David Cook, "Moral Relativism – Schools and Society," The Whitefield Institute Briefing, 1 (1996) : 1. See also pp. 217-23.

[263] Another attempt to foster a new tradition is seen within the baby-boomers. Many women of that era recognised the opportunities offered by the feminist movement, regardless of whether they embraced it themselves. Many obtained a university education, but also recognised the greater potential benefits for their daughters. Yet, these mothers cannot guarantee their daughters will take full advantage of this new tradition. Regarding any new tradition we must be aware certain values are more likely to be

Analysis of tradition and history highlights their influence on values and fostering new traditions. Tradition is part of the context within which people exist and is important for understanding persons.[264]

Humanity and Personhood

MacIntyre recognises the importance of unity and social roles in a person's life.[265] This unity can be linked to integrity, which requires reference to the "wholeness of human life".[266] Recognising individuals are not defined solely by their social roles, viewing them as a whole and not simply as parts, is crucial in relating to them appropriately. MacIntyre usefully emphasises the importance of integrity, wholeness and unity in human life.[267]

MacIntyre also stresses the role of the virtues.[268] Yet, every life will not necessarily fulfil MacIntyre's requirements. He could claim a human life which fails to exhibit the virtues and narrative unity is less valid or significant than one which does. If he supported this view, then he could end up with a hierarchy of people based on their worth and value in meeting his criteria. This evaluation of people leads to weighting individuals primarily based on desert and merit. Those who exhibit more virtues and greater unity of life are entitled to more benefits and recognition from society.[269] Alternatively, for MacIntyre, the aim of virtue could be to produce excellence either regarding a particular virtue or overall, holistic excellence in persons.

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embodied if awareness about them has been raised, but there is no ultimate method of controlling the choices people make.

[264] See pp. 203-8.

[265] See pp. 147-8. MacIntyre, *AV*, 204, 218-19.

[266] See p. 163. MacIntyre, *AV*, 203.

[267] See pp. 215-17.

[268] See pp. 160-5. MacIntyre, *AV*, chapter 15.

[269] MacIntyre advocates the notion of desert, with regard to justice, and critiques theories which do not incorporate it. See pp. 157-60.

MacIntyre's emphasis on the virtues raises the question of what a virtuous person is. A virtuous person may exhibit particular virtues or excel and be excellent on multiple levels. Being 'virtuous' might be equated with being 'good' and pursuing 'good' ends through 'good' means. Yet, because we cannot guarantee people will be virtuous or good all of the time,[270] and there may be different conceptions of virtue,[271] a notion of protection for persons in a society or community will be important.[272]

Regarding personhood, MacIntyre highlights practical reason which is linked to *phronesis*.[273] Yet, MacIntyre notes there are no general rules for applying rules.[274] Exercising judgment, particularly in moral dilemmas is vital. MacIntyre rightly emphasises the need to consider general principles and specific contexts, as both affect the dilemma, persons and implications, but he is vague about how to achieve and apply this judgment. One useful approach for persons might incorporate a notion of appropriateness or fittingness.[275]

Regarding persons, MacIntyre accurately stresses the importance of rationality and context in justification.[276] Yet, he does not recognise alternative elements sufficiently. Others argue justification requires good reasons for action[277] and may involve the laws of logic and principles.[278] What else might justification entail? It could involve deductive and inductive reasoning. It also might include areas like intuition, insight, and creativity. It is important not to overlook these less concrete

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[270] Encouraging virtues, like a new tradition, involves education, training and development. See pp. 183-4.
[271] See pp. 164-5.
[272] See pp. 230-7.
[273] See pp. 150-4, 164. MacIntyre, *AV*, 154, 223 and *WJWR*, 185.
[274] See pp. 174-5. MacIntyre, *WJWR*, 116-17, 195-6.
[275] See pp. 237-45.
[276] See pp. 149, 153.
[277] E. David Cook, "The Use of Rationality in Religious and Metaphysical Argument," (Ph.D. diss, University of Edinburgh, 1973), 403, 405. Emphasis added. Cook also notes the importance of context within justification. He stresses the assessment of good reasons for acting may vary according to the circumstances, object and persons concerned.

notions, as they contribute to a more emotional and subjective assessment, but are nonetheless a vital part of humanness. We should recognise the role they play in influencing our decisions and judgments, making them explicit not implicit.

For example, if a nurse denies or ignores that she is emotionally affected by her patients, and that these emotions affect her decisions and interaction with them, it is far more difficult to address the reality of the situation than if these elements are recognised openly. If the nurse is more explicit about her feelings and judgments then it will be easier to deal with tensions between doctors, other nurses, patients and families. If her reasons for action remain implicit, it is very difficult for other people to interact with these ideas, agree or disagree, but most importantly to offer support where needed.

We all need support at different times and to different degrees. We must remember as humans we do not live in isolation. Our actions and emotions affect others and vice versa. We are part of a larger society and smaller communities. MacIntyre accurately stresses this communal aspect of the self.[279] MacIntyre argues against emotivist and individualist views of the self.[280] However, there may be an important element of humanity which each view of the self emphasises. Rather than choosing between these three versions, it might be possible to integrate these insights.

Part of the dilemma is that the emotivist reduces the individual to emotional expression, the individualist focuses too singly on personal choice, and the communalist focuses too much on the needs of the group. All of these perspectives ignore important elements in the nature of humanity, leaving an imbalanced and simplistic perception. A descriptivist could claim people would agree that persons

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[278] Mason, "MacIntyre on Liberalism and its Critics: Tradition, Incommensurability and Disagreement," 234-6.
[279] See pp. 149-50. MacIntyre, *AV*, 220-1.
[280] See pp. 142-4.

consist of mind and body, reason and emotions. Individuals should not be ruled completely by rationality, as they might lose any sense of compassion or connection with other people, nor should they be ruled entirely by emotion, as they may lose objectivity about people and situations. Both reason and emotion, like justice and care, need to be maintained, encouraged and balanced to hold an accurate notion of personhood. Recognising the rational and emotional, as well as the communal and individual, dimensions is part of formulating a holistic view of human beings.[281]

Community

MacIntyre's view of community incorporates a common project[282] and notion of accountability.[283] Accountability links people together, as anyone can be required to explain and justify his/her actions to others at any time. Accountability can serve as a means of ensuring certain standards of behaviour or agreed goals are upheld within a community.[284]

Within moral communities, MacIntyre relies on an idealised notion of the past.[285] In particular, his account of Aristotelian society mentions only briefly the unfair treatment and exclusion of non-citizens, slaves, and women within it.[286] His view also implies a belief that in the past a consensus about morality existed.[287] If so, he does not acknowledge there always have been a variety of moral views and opinions and that there was no such ideal point in the past.

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[281] See chapter 1. Also see pp. 215-17.
[282] See p. 149. MacIntyre, *AV*, 156.
[283] See pp. 148-9. MacIntyre, *AV*, 217-18.
[284] See pp. 222-3.
[285] See p. 179.
[286] See MacIntyre, *WJWR*, 104-6. Furthermore, the virtues were not equally open to all in Athens. MacIntyre discusses some of these deficiencies in Aristotle's view of democracy, or "aristocracy", but maintains Aristotle's view of the best *polis* remains unscathed, and does not seem to give them appropriate weight or consideration.
[287] See pp. 142-3. MacIntyre, *AV*, 110-11, 118.

In contrast, MacIntyre argues modern morality has no clear consensus regarding its content.[288] Yet, it can be argued there is a moral core found in all societies or communities regarding the value and sanctity of human life, parent-children relationships, sexuality, property allocation or belonging, and truth-telling.[289] This is not to claim that all societies and communities have the *same* view of these areas of morality. The point is to highlight that there is a common core and *some* degree of consensus within modern morality. Thus, MacIntyre presents an imbalanced view of past and present moral communities.[290]

MacIntyre is correct in noting differences between past and present communities, but this does not translate as one necessarily being superior. Furthermore, a moral and communal framework of the past is not easily applicable to our western society today, as changes in lifestyle, technology, mobility, and expectations are different now. A more balanced view of community needs to be realistic, not idealistic.[291]

Analysis of MacIntyre's view of humanity includes context, wholeness or integrity, virtuous people, the need for minimum standards of protection, the importance of rationality, justification, emotions, community and accountability. These elements contribute to a holistic approach to humanity,[292] which also involves a moral dimension.

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[288] See pp. 142-3. MacIntyre, *AV*, 2, 110-11, 226.

[289] Cook, *Dilemmas of Life*, 62. This is not to claim that all communities would agree on the specific content of these areas, but it does point to some areas which are fundamental to morality across cultures and time.

[290] In relation to our current western society, we may need to recognise the tension between the optimistic Lockean and pessimistic Hobbesian views of human nature. A further area of exploration may be which perspective will be the basis of community. Both may have strengths and weaknesses, and like care and justice, reason and emotion, the individual and community, we may need both to maintain a balanced society. See also Locke, *A Second Treatise of Civil Government*, 4-5. Hobbes, *Leviathan*, 141-5.

[291] For further discussion of this crucial theme see pp. 217-23.

Morality and Moral Theories

Along with his critique of contemporary morality, MacIntyre attacks the rational secular view of nature and morality.[293] Both MacIntyre's claims about rational secularism and whether it is an accurate account of morality are questioned. As noted, people are not only rational creatures. Emotions have a role too.[294] Furthermore, people do not hold a solely secularist view in which this world, believing that the here and now, is all that exists. Many people believe in a spiritual or mystical realm, as supported by the number of books, publications and groups addressing this dimension. So his diagnosis of modern morality seems inaccurate given different aspects of modern culture.

A test of morality is not only its theoretical base, but how people make real decisions. We might ask whether people today are better or worse at making moral decisions than in the past? Some may claim we are more morally aware now than in the past. Many news stories and discussion programmes include or are centred upon the moral dimensions of an issue.[295] There is much discussion in the public domain about moral dilemmas, particularly regarding health care ethics.[296] Part of this phenomenon could be because information is available more broadly about technology and health care advances than in the past. So, there might be raised awareness of the theoretical and practical elements of morality. As morality incorporates theoretical and practical dimensions, a balanced and sufficient framework for moral decision making needs to recognise both.[297]

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[292] See pp. 215-17.
[293] See pp. 142-3. MacIntyre, *AV*, 256.
[294] See pp. 186-8.
[295] For example, *Everyman*, *Heart of the Matter* and *The Moral Maze* all focus on moral and ethical issues.
[296] Another example of the pervasiveness of moral and ethical issues is that ethics committees within the health care professions have become standard features.
[297] See chapters 5 and 6.

Morality involves theoretical and practical elements and incorporates the virtues.

Virtues

MacIntyre defines a virtue as a disposition or sentiment which produces obedience to certain rules.[298] Is this the only or most accurate view of virtue? Is the nature of virtue a certain quality or attitude? What is the relation between virtues, action and behaviour? A virtue might be a disposition exhibited in an attitude, e.g. of generosity. Alternatively, it might be a characteristic or quality exhibited more directly in a generous act. Yet, a virtue might not be limited to just a disposition or quality. Like patience it can be both.

Perhaps virtues can be seen not only as dispositions but also skills. What is a virtuous or good nurse or doctor? One list may includes the virtues of care, communication, consistency and truthfulness. Can we inculcate these virtues into people?[299] If a virtue is viewed only as a disposition, then we cannot do this successfully because a person either has or does not have the disposition.[300] Alternatively, if being a good nurse or doctor involves acquiring virtues in the sense of skills, we may be able to influence and encourage possession of the virtues, as a skill involves deductive, rational and inductive, practical elements.[301] If virtues can be acquired, we may encourage them in people through training, education and practice.[302]

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[298] See p. 162. Also MacIntyre, *AV*, 244.
[299] See pp. 183-4.
[300] This view assumes the virtues are based on nature not nurture.
[301] MacIntyre could support this view as he recognises the importance of rationality, and considers practical rationality a virtue, and also emphasises the role of practice. See pp. 150-4, 166-7.
[302] See pp. 183-4.

Do we need to provide a moral carrot to foster the virtues and a moral stick to squelch the vices?[303] Locke was optimistic about people's nature, wanting to protect maximum liberty and believing individuals would by nature be honourable. In contrast, Hobbes was pessimistic, viewing humans as naturally at war against one another.[304] If we subscribe to an optimistic view, human nature is seen as generally good and virtuous. People do not need monitoring and should be left to themselves. If we subscribe to a pessimistic view, where people are generally bad and self-interested, we would support the need to protect people from one another in society.[305]

Such views question whether virtuous people are best formed by a change in the persons or their environment and context. For example, one element in producing good and virtuous nurses has been a shift in their environment toward increased professionalisation.[306] This has included greater emphasis on the theoretical aspects of training and increased responsibility, and a reduction in time spent on teaching practical skills. Whether this shift has produced better nurses or damaged the caring ethos of the profession may depend on the quality of the training, teachers and students. It also might depend on a correct balance of the theoretical and practical elements. Encouraging virtuous people, if possible, may be complex and involve both individuals and their environment, or context.[307]

A view of the virtues, and their role in humanity, is connected to the good.

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[303] One might ask whether the use of carrots and sticks, albeit of a moral variety, leads to genuine morality at all.
[304] See pp. 59-60. Also Locke, *A Second Treatise of Civil Government*, 4-5. Hobbes, *Leviathan*, 141-5.
[305] See pp. 230-7.
[306] This professionalisation also can be connected to nurses seeking greater professional status.

The Good

MacIntyre's definition of the good is closely tied to the Aristotelian notion of *eudaimonia*, the good and best life for humans,[308] and the virtues.[309] He also recognises the importance of community as a context for both.[310] *Eudaimonia* is often translated "happiness", and sometimes "human flourishing".[311] As a notion of flourishing surpasses basic survival, it may be part of a maximum standard, ideal or goal in a community.[312]

A difficulty with MacIntyre's definition is its vagueness and lack of objective criteria for defining the good for humans. If individuals are free to interpret for themselves what being and doing well entails, then MacIntyre's definition could slide into subjectivism or relativism.[313] What needs to be determined is whether there is any common ground for further defining this good. A descriptivist approach claims most people would agree it is good for people to have certain things, i.e. good health, safety and security, relationships and education.[314] Initially, it might appear that MacIntyre would disagree with this approach, but he is actually a descriptivist with regard to the virtues, as he believes a core conception can be found.[315] So some

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[307] See pp. 203-8.
[308] See pp. 165-6. Also MacIntyre, *AV*, 148-9 and *WJWR*, 108-9.
[309] See pp. 165-6. MacIntyre, *AV*, 219.
[310] See pp. 149-50.
[311] Martha Nussbaum, *The Fragility of Goodness*, (Cambridge: Cambridge University Press, 1986), 6. See chapters 11 and 12 for a more in depth discussion of *eudaimonia*. W. D. Ross addresses the translation of *eudaimonia* in his introduction to *Nichomachean Ethics*. John Cooper, *Reason and Human Good in Aristotle*, (Cambridge: Harvard University Press, 1975). Cooper translates it as "human flourishing".
For a broader discussion of human flourishing see Harman, "Human Flourishing, Ethics and Liberty," 307-322. Tibor R. Machan, "Harman's 'Refutation' of the Flourishing Ethics," Thomist 49 (1985) : 387-91. Rasmussen and Den Uyl, *Liberty and Nature*, 16-17, 36-38, 96. Wong, "On Flourishing and Finding One's Identity in Community" 324-41.
[312] See pp. 215-17.
[313] See pp. 180-1.
[314] Maslow provides a descriptivist view of human needs. See pp. 78-9. Cf. Finnis, *Natural Law and Natural Rights*, 85-99. Finnis argues the seven basic forms of human good are life, knowledge, play, aesthetic experience, sociability or friendship, practical reasonableness and religion.
[315] MacIntyre, *AV*, 186.

agreement might be reached regarding minimum and maximum standards in a community.

A core conception of the good for humans recognises needs, in contrast to merit or desert. One danger of desert and merit, regarding resource allocation within health care, is an unwillingness to treat those with self-inflicted injuries arguing they do not deserve treatment.[316] Another endangered group are the less-contributing members of a community, the weak or vulnerable.[317] Because they will not or cannot contribute to the good of a community in the same way or degree as others, the danger is they will be seen as less valuable and deserve fewer societal goods or benefits. This view emerges because desert and merit are linked to an individual's contribution or capacities in society, rather than his/her intrinsic worth.[318] Alternatively, allocation based on need does not rely on a person's contributions and capacities, but places individuals on an equal par and focuses on meeting needs. So, needs play a role in providing a basic, or minimum, level of interaction with and treatment for all people.[319]

Within the discussion of the good, the role of flourishing as a maximum standard was explored. In contrast, meeting needs may be part of a minimum standard, which also is linked to justice.[320]

Justice

For MacIntyre, justice is based on desert and merit, which are uniform, impersonal standards.[321] One danger of using these criteria is they remove or destroy

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[316] They include smokers, HIV/AIDS patients, drug abusers and bungee jumpers.
[317] They include children, the senile demented and physically and mentally ill.
[318] See pp. 213-15.
[319] See pp. 223-9.
[320] See pp. 230-7.
[321] See p. 157. MacIntyre, *AV*, 192.

the relational and human element from interactions involving justice. Yet, a person's feelings, opinions, wants and desires should not be the most influential factors, or given undue weight, in a moral decision. We want to prohibit subjective factors from inappropriately influencing moral interactions. So, moral judgments might require an objective, rational element which is recognisable and accessible to all. Furthermore, 'objective' does not necessarily mean totally unemotional. An adequate framework for moral decision-making recognises both objective and subjective elements.[322] It offers a holistic approach, providing an appropriate place and weighting for both reason and emotions.[323]

What people deserve, want and need may be very different. Some people want more than they need, like baby-boomers and yuppies, while others need more than they want, like elderly people in hospital. Who decides on the standard of desert and need? For instance, in America, Mrs. Bobbitt removed part of her unfaithful husband's anatomy. She might claim he received what he deserved or needed, while Mr. Bobbitt might claim otherwise. Part of his claim against deserving or needing such treatment might be that his wife's punishment was disproportionate to his offence, unfair and inappropriate.

Desert, fairness and appropriateness can be related to rewards and punishments. Are rewards and punishments appropriate for all contexts? This seems unlikely. In a hospital it is not appropriate to apply a system of rewards and punishments to patients, but in reality this happens. Patients are rewarded or punished by nursing staff in an informal, subjective way based on patients' personality and demand level. Difficult patients are often treated differently from more accommodating or likeable patients. One problem is this system of rewards and

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[322] See pp. 186-8.

punishments is informal and not explicit. Difficult patients are not aware of the potential effect of their interaction with nurses, and in danger of being discriminated against, however blatantly or subtly. It is not fair or appropriate to respond to patients primarily in this subjective way. We need a means of protecting patients from such non-explicit biases.[324]

In contrast to desert or fairness, justice may focus on needs and wants. Needs may be objective and subjective.[325] Objective needs are primarily those which are basic to human life and necessary for survival, while subjective needs are not fundamental to survival. Want is connected to, but distinct from, need as it implies not having or lacking something. People often confuse these concepts, claiming to 'need' something which is actually a want.

Further critical examination of justice noted dangers of desert and merit alone, the potential role of fairness and appropriateness in moral decision-making. A holistic approach, including rational and emotional, objective and subjective elements regarding persons and moral judgments was investigated. These judgments also might involve rights.

Rights

MacIntyre argues "rights" are "fictions"[326] and not universal features of the human condition.[327] If this is the case, then what is the basis of rights claims?

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[323] See pp. 215-17.
[324] The nurse's own view of practice and responsibility, as well as United Kingdom Code of Conduct (UKCC) for nurses, provide some level of protection for patients. See "The Code of Professional Conduct for Nurses, Midwives and Health Visitors," United Kingdom Central Council for Nursing, Midwifery and Health Visiting, (London: UKCC, 1984).
[325] See p. 46 where Downie and Telfer discuss absolute and relative needs.
[326] MacIntyre, *AV*, 70.
[327] Ibid., 66-70.

One arena where rights claims might make sense is the legal world.[328] We can talk about a woman's right to have an abortion. In Britain, this right was specified in law in 1967-68.[329] There are restrictions and limitations on the right to abortion, but as long as a woman fulfils the legal requirements of the law, she is entitled to an abortion. Rights in law imply responsibilities. If a woman has a right to have an abortion, then society, usually through doctors, has a corresponding responsibility to provide abortions.

The question arises whether there are human or natural rights above and beyond legal ones. MacIntyre argues persuasively that it is not possible to discover an adequate base for human or natural rights.[330]

While legal rights make sense, it is less clear how human and natural rights can be defended or proved. Within a legal framework, a nation accepts responsiblities for its members, who can thus claim rights. It is harder to see how there are fundamental rights for people simply on the basis of their humanity, because it is unclear who has the reponsibility to provide what is required.

Yet, despite such arguments against wider notions of rights, Western culture is saturated with rights-claims. This may be because people have such a highly developed moral sense that they are constantly aware of others' rights. It may reflect the rise in autonomy of the self as seen in law and expressed as individual rights. At times there is a confusion of human rights with human needs and freedoms. There may be basic human needs which we all have a moral responsibility, duty and

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[328] Legal rights may depend on a particular view of laws and rules in which they serve as minimum standards people must meet or keep. For example, racial discrimination laws were instigated to ensure certain behaviour was not permitted or tolerated.

[329] See British Medical Association, *Rights and Responsibilities of Doctors*, (London: British Medical Association, 1992), 67-70. Yet, this law allows for doctors to refuse to perform an abortion based on conscientious objection. Thus highlighting that legality and morality are not necessarily the same.

[330] See pp. 144-5. Cf. Finnis, *Natural Law and Natural Rights.*

obligation to meet.[331] The recognition of need is not equivalent to the establishment of a right.

There is further confusion in rights talk between freedoms and rights. Suicide is not a crime,[332] so some argue there is a 'right to die'. Rather there is a freedom for an individual to take his/her own life. There is no responsibility to kill someone. Freedom may be a more accurate description of what some claim as 'rights'.

Rights talk is valid in legal rather than natural or human contexts. It must be distinguishable from needs and freedoms and implies correlative responsibilities.

MacIntyre and Rawls

The ethics of justice proposed by MacIntyre and Rawls can be both compared and contrasted. Regarding their views of humanity, both theorists discuss a notion of persons which includes rationality[333] and justification,[334] motivation[335] and roles.[336] While Rawls focuses more on individuals and assumes they are rational, self-interested and free,[337] MacIntyre views a human life as having narrative unity and being placed within a communal context.[338] Both theorists address community or society as including shared ends or values.[339] While Rawls is more concerned with social responsibilities, particularly to the least-advantaged,[340] MacIntyre focuses on accountability within a community which encourages the virtues.[341] Both authors

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[331] See pp. 176-8. See also discussion from a care perspective, p. 46-8, 52-3.
[332] BMA, *Rights and Responsibilities of Doctors*, 77. The law was changed in the Suicide Act 1961. It is not a criminal offence to commit suicide, but assisted suicide is punishable for up to 14 years imprisonment.
[333] See pp. 102, 150-4.
[334] See pp. 99-100, 156.
[335] See pp. 105-6, 154-5.
[336] See pp. 107-8, 147-8.
[337] See p. 93-4.
[338] See pp. 149-50.
[339] See pp. 94, 149.
[340] See pp. 86-8.
[341] See pp. 149-50.

include a notion of virtues and judgment within the moral realm,[342] while MacIntyre places more emphasis on the importance of virtues, particularly practical rationality and justice.[343] Lastly, although both theorists discuss a view of justice in detail, MacIntyre bases his on desert,[344] judgment and virtue,[345] while Rawls focuses on fairness,[346] equality and rules for applying social justice.[347]

Further differences in perspective involve Rawls' philosophical base as a Kantian versus MacIntyre's base drawing from neo-Aristotelian and Thomist views.[348] Rawls focuses on individualism not communitarianism, attributed to MacIntyre.[349] Rawls is concerned with minimum standards of distributive justice which attends to equality of needs and opportunities,[350] while MacIntyre highlights the important notion of *eudaimonia*,[351] or human flourishing, as a maximum standard.

Despite their differences in content, both MacIntyre and Rawls' ethics of justice highlight the common themes of humanity and personhood, society or community, morality and justice which are vital to integrating the ethics of justice and the ethics of care.

Conclusion

Critical analysis of MacIntyre emphasised the importance of tradition, personal history and setting as part of the context for persons and decisions. As decisions are made by persons, a view of humanity is crucial to understanding decisions. The importance of rationality, moral judgment, justification, and emotion

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[342] See pp. 104-5, 160-5.
[343] See pp. 150-4, 160-5.
[344] See pp. 157-60.
[345] See pp. 160-5.
[346] See p. 98.
[347] See pp. 89-91.
[348] See pp. 98, 109-10, 142-6, 160.
[349] See pp. 93-4, 149-50.
[350] See pp. 86-7.

in contributing to a holistic notion of persons was analysed. People exist in communities and societies, which involve a shared project, notions of accountability and provide a context for wholeness. Such integrity and unity of life contribute to human flourishing, which is part of a maximum, or ideal, standard in community. Standards in community also are linked to the virtues and involve judging the moral appropriateness and fittingness of situations and decisions. Communities also need minimum standards in order to function. These are based on needs, protection and justice which includes desert, fairness and equality.

Further Concluding Remarks: The Ethics of Justice and Care

The ethics of justice as propounded by MacIntyre and Rawls were selected and examined due to their influential impact on contemporary discussions of justice. Descriptions of both theories were given on their own terms and two levels of critique offered.[352]

General critiques of MacIntyre address his idealistic view of past morality, flawed views of humanity, rationality, justice and the virtues.[353] Critical discussion highlighted MacIntyre's critique of liberal individualism and rights, and the danger of relativism within his communitarianism and view of traditions.[354] Regarding Rawls' theory, general critiques focused on his two principles of justice, objections to his original position, his view of persons, as highly individualistic, and society. Commentators also examined his theory in relation to an opposing utilitarian alternative.[355]

Critique of MacIntyre and Rawls from a middle way perspective highlights a

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[351] See pp. 165-6.
[352] See chapters 3 and 4.
[353] See pp. 168-82.
[354] See pp. 176-8, 178-81

number of key areas.[356] The importance of justice, which specifically includes fairness, equality, desert, entitlement and equity was examined. Analysis of both theorists emphasises a view of persons based on rationality, morality and community, while stressing the importance of holistic interaction with people based on their integrity, dignity and intrinsic worth. While Rawls notes the importance of positive and negative responsibilities and duties in society, MacIntyre emphasises the virtues and accountability in community. MacIntyre accurately notes community is part of a wider context, including traditions and background, which contributes to a proper understanding of persons. Further analysis of both theorists drew out the importance of a notion of fittingness and appropriateness within morality, whether regarding justification or judgment.

In seeking some integration of the ethics of justice and the ethics of care, critical exploration of both ethics has stressed the need for minimum and maximum standards in society.[357] Minimum standards focus primarily on justice, but also can be linked to care. Justice includes considerations of fairness, equality and equity, and protects against the weaknesses of care, such as relativism, subjectivism and optimism.[358] Maximum standards focus on benefit for people and helping them flourish. Both minimum and maximum standards can be paralleled to negative and positive responsibilities, which incorporate duties and attend to needs. Responsibilities arise within the context of some community, whether professional or personal. The context and background within which persons function provide greater understanding for choices made. A view of persons involves their relationships, rationality, morality, integrity and dignity. Recognising the intrinsic worth of persons

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[355] See pp. 111-21.
[356] See pp. 121-40, 183-99.
[357] See pp. 68-83, 121-40, 183-99.
[358] See pp. 85-7.

supplies a moral basis for individual worth and contributes to holistic interaction with them. This approach and understanding of persons includes being appropriate with and to them. Judging what is appropriate and fitting to persons and situations is vital within morality. Part of analysing moral dilemmas, decisions, judgments and justifications is assessing their appropriateness.

Exploring and critically examining both the ethics of justice and the ethics of care has highlighted five key areas: context, a view of persons, responsibilities, principles of justice and appropriateness. As these themes are vital to producing a genuine amalgam of both the ethics of care and justice and constructing a middle way, their nature, content and relationships must be investigated and analysed more fully.

Chapter Five: A Middle Way Model

Introduction

In critically examining the ethics of care and the ethics of justice different themes important for an amalgam of both have arisen and been analysed. A middle way model, as offered in this chapter, is *one* proposed means of integrating care and justice. It does not mean literally 'in the middle' of care and justice, but represents an amalgam of elements from the two ethics and proposes a more balanced framework for morality than either ethic alone.

A middle way model incorporates elements from both the ethics of care and justice and should be viewed as a whole. Its five key elements are context, persons in relationship, responsibilities, principles of justice and appropriateness. The element of context, including setting, background, culture, frameworks and ideologies and persons is important because it provides a foundation for understanding situations and decisions. A notion of persons involves rationality, their intrinsic worth and value, a holistic approach to them and community. Context, relationships and community give rise to responsibilities, which involve fulfilling maximum and minimum standards. Principles of justice will play a key role in developing minimum standards of interaction and decision-making. Appropriateness is vital in any moral decision or judgment, as it helps balance the other factors and aids moral decision-making.

Context

Context includes setting and background, culture, underlying ideologies and frameworks and persons.

One clear example of the importance of context for understanding any situation is found in approaching literature. In examining any literary text general

issues of criticism and interpretation arise. To understand the meaning of the work, literary criticism explores different levels of writing,[1] such as the setting and context in which the text was created, the author's own life, aims, beliefs and values, and the social customs, norms and values of the time.[2]

Setting is important to understanding a text, situation, or, as MacIntyre recognises, persons.[3] There are multiple settings, both public and private. Within health care the setting could be a hospital, general practitioner's surgery, clinic, hospice or home. The setting is crucial because it will affect the participants, their interactions and choices. It can be more advantageous to some participants than others, and put people at their ease or make them more anxious. Understanding the setting as part of the whole context is vital in its impact on individuals, groups and decisions.[4]

The setting also contributes to what is deemed appropriate. For a person to approach a nurse at a social party and request a measles vaccination would be inappropriate, because the setting is not professional and the person's condition is not an emergency. In contrast, a request for the nurse to perform cardiac resuscitation on a person having a heart attack would be appropriate. The life-threatening nature of the situation temporarily overrides the usual personal and professional boundaries and affects our judgment of what is appropriate and inappropriate in the setting and context.

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[1] In contrast to a classic view of interpretation, the post-modernist emphasis is on the reader, subjective interpretation and deconstruction of the text. See E. David Cook, *Blind Alley Beliefs*, (Leicester: IVP, 1996), 9-49.

[2] This literary sensitivity has been particularly evident in the interpretation of the Bible and other religious texts. Much attention has been given to understanding the meaning, interpretation and application of them. In fact, a large contribution to the discussion of contextualisation has developed in the arena of Biblical translation, interpretation, application and communication. See also pp. 237-45.

[3] See pp. 147-8. MacIntyre, *AV*, 206. He claims that an understanding of the setting, and its history, is vital to an understanding of a person.

[4] See pp. 5-6, 9. Gilligan describes women's approach to moral development as being more contextually based than men's.

One specific aspect of setting is background and culture. There are at least two levels of culture which need to be recognised; a person's culture of origin and the culture which provides the context for the specific situation. The former is crucial in understanding an individual's views, beliefs, values, customs and habits, as he/she will have been influenced and shaped fundamentally by it.[5] The latter may or may not be different, and can have a positive or negative, liberating or restrictive, impact on the individual. Culture influences the creation of norms, values and expectations in a given context.

An enlarged concept of context and a deepened understanding of culture is "contextualisation", according to Hesselgrave and Rommen.[6] Culture has both an interpretative perspective and a knowledge base. It is related to a body of knowledge shared by members of a group,[7] and takes the forms of formal or informal rules.[8] Hesselgrave and Rommen emphasise the fact of shared knowledge. It is used to interpret and evaluate how individuals and groups relate to one another and their environment. This evaluation is based on a learned set of rules which determine the appropriateness of behaviour, communication patterns, and emotions.[9] Furthermore, context serves as a mechanism of reference in a situation.[10] From the culturally influenced and shared values and norms, people learn to behave appropriately.

Hesselgrave and Rommen speak, somewhat cryptically, of culture as a layer of context, as they believe contexts are nested within contexts and each is a function of

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[5] Hesselgrave and Rommen, *Contextualisation*, 158-9, 165. Shorter, *Evangelisation and Culture*, 30. See pp. 60-1.
[6] Ibid., 28. See pp. 60-2. Cf. Benner and Wrubel's definition of background meaning, which includes a shared, public understanding of the world.
[7] Ibid., 158.
[8] Ibid., 158.
[9] Ibid., 159.
[10] Ibid., 166. See p. 61.

the bigger context, all finding a place within the context of culture.[11] Their approach to the understanding of context in relation to culture assumes an integrating body of knowledge and language behaviour shared by a number of groups or communities.[12] Context embodies the total system of cultural principles, inter-community communication patterns, and forms of acceptable behaviour in that culture.[13] An awareness of the shared communication, knowledge and principles is vital to understanding any culture, group or individual. This awareness helps explain people's perspective, expectations, understanding and interpretation of the world, and their priorities and actions. All these factors illuminate the background of and reasons for their choices and decisions.

Within context, an ideology provides the content of belief systems and values, while a framework is the form of expression these beliefs and values take. An ideology affects what and how a person interprets and understands a situation, while a framework affects the expression of that interpretation. Ideologies can be either implicit or explicit in the process of interaction and decision-making, and provide crucial information about an individual, group or institution's values. It is vital that ideologies are not ignored, but explicitly recognised, if we are to understand fully the context, including the motives, agenda, methods, and meanings, in any situation.

Given that in most instances of interaction with people there are likely to be more than one set of values and ideologies held, we are bound to face conflicts. In being more sensitive to grasping context, we can sharpen our awareness of potential

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[11] Ibid., 165. The authors seem to be confusing a description of different layers of culture with that of circles of culture. Elsewhere they refer to levels of culture, which is clearer (166-7).
[12] Ibid., 165. They view language as a "means of expressing and disseminating the content of culture" and believe it functions as the key to and primary vehicle of the reflective processes which generate the pool of shared knowledge that defines a given culture (161).
[13] Ibid., 165. They argue we should never overlook this wider dimension in the relationship between context and the process of contextualisation, but also recognise the breadth of this dimension may be problematic because at this level only general phenomena can be predicted and described.

friction points between ideologies. These points include conflicts of ideologies, values, beliefs, ends, or means, as well as conflicts of theory, practice or application. One means of resolving these different levels of conflict may be an appeal to the notion of appropriateness, as it takes many of the factors and layers of context into consideration as we judge what is appropriate and fitting to the people, situation, roles, values, and resources.[14]

Within each element of context, persons have a crucial place. Interpreting context and understanding individuals should begin with a holistic perspective of the people involved. In every situation and context, the participants are persons with motives, agenda, choices to make, and consequences to face. They are complex, multi-dimensional beings with personal and social histories.[15] These histories include their familial, relational, emotional, intellectual, spiritual, psychological, physical, and cultural backgrounds.[16] To avoid being too simplistic or reductionistic in our dealings with others, we must attempt to gain a balanced and complete picture of their context, history, and personal story.[17] One key to grasping fully and interpreting accurately a particular context is through viewing persons as totalities, and not simply reducing them to their role in a particular situation, like patients, clients, nurses, doctors, or managers.[18]

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[14] See pp. 237-45.
[15] Benner and Wrubel, *The Primacy of Caring*, 27-8. MacIntyre, *AV*, 217. See pp. 62, 145-6.
[16] Ibid., 45-6. See pp. 60-1. This notion of personhood is a crucial theme for this middle way, and the discussion will return to and explore it in more depth later. See pp. 208-23.
[17] See pp. 145-6. MacIntyre, *AV*, 218-19. It is interesting to note that MacIntyre relates the notion of texts to personhood.
[18] See also Walsh, "Knowledge in its Social Setting," 321-36. There are two interesting points to highlight in relation to Walsh's article. The first is his claim that far from being irrelevant, the social context of claims to knowledge is vital to whether the claims succeed and to their correct adjudication. So he also recognises the importance of context. The second point is that Walsh stresses that the tradition of a branch of knowledge is important to its progress, because the members of a profession "...stand on the shoulders of predecessors and depend, in a way which is quite unavoidable, on the co-operation of colleagues." We might infer that the tradition and background of a profession, or branch of knowledge, is vital to understanding it and to its progress.

Gaining a more complete understanding of any situation context is crucial in moral decision-making. It involves setting and background, which includes culture, its shared knowledge, interpretation, expectations and understanding, and the underlying ideologies and frameworks of persons, groups, institutions or communities.

Persons in Relationship

A view of persons is crucial to the theory and practice of a middle way , as it shapes our interaction with and expectations of others, particularly in determining appropriateness.

Rationality

One important aspect of persons is rationality.[19] Part of understanding persons involves rational knowledge of others and ourselves. For Blustein, self-knowledge involves knowledge about people's concerns and what motivates their own actions and influences their lives.[20] Being realistic about ourselves will help us identify our motives, and then assess their appropriateness in relation to decisions, their application and context. We must be careful not to interpret a view of self-knowledge in too limited a way. It does involve an awareness of why we act as we do, but surpasses intellectual and behavioural knowledge of what motivates and influences us. Self-knowledge also includes what affects us emotionally and spiritually and how our physical being functions and reacts. Self-knowledge must include all of these levels

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[19] Cf. Noddings stresses the importance of relationship, receptivity, emotion and caring rather than rationality. See pp. 50-1, 55-6. Gilligan highlights women's emphasis on relationships, connection and responsibilities, not rationality. See pp. 5, 11. Cf. Benner and Wrubel's phenomenological view pp. 60-2.

[20] See p. 62. Blustein, *Care and Commitment*, 56.

in order to be balanced and holistic, to enable us to assess accurately our motives and find appropriate ways of expressing them in the context.

On an ontological level, rationality is a fundamental part of recognising, understanding and expressing what there is and how we describe that reality. A key assumption is that our world makes sense, reality is intelligible, and there are patterns and regularity in nature which are rational and sensible. We also assume people are generally rational and able to make sense of the world, things and other people. Because things make sense and people can make sense, people can make sense of what makes sense. There seems to be an inherent intelligibility in the nature of things and an inherent intelligence in the nature of people.[21] On an epistemological level, some people claim rationality is concerned with the process of knowing and what we know. It deals with our knowledge and understanding of reality. On a linguistic level, some people claim rationality is linked to and makes possible communication. The means of communication most often make sense and are reasonable and rational. The use of language seems to assume the human capacity for understanding, being rational, the ability to express ourselves and to be understood in reasonable ways.[22] In these understandings of rationality, ontology, epistemology and communication are part and parcel of the rationality of human beings.[23]

Downie and Telfer place great weight on an individual's rational capacities,[24] and Rawls assumes people are rational, self-interested and free, or autonomous.[25] For

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[21] See p. 148-9. MacIntyre, *AV*, 217-18. He notes the importance of intelligibility in humans.
[22] Cf. Hesselgrave and Rommen, *Contextualization*, 161. They view language as a "means of expressing and disseminating the content of a culture". They believe "it functions as the key to, and primary vehicle of, the reflective processes which generate the pool of shared knowledge that defines a given culture."
[23] T. F. Torrance, *Theological Science*, (London: Oxford University Press, 1969). T. F. Torrance, *God and Rationality*, (London: Oxford University Press, 1971).
[24] See pp. 63-5. Downie and Telfer, *Caring and Curing*, 38-9.
[25] See pp. 86, 93. Rawls, *TJ*, 11-13, 141-4.

these authors rationality involves, in part, exercising choice.[26] An alternative view of individuals is Benner and Wrubel's non-reflective, phenomenological perspective.[27]

One difficulty with accepting a phenomenological view is the two-tiered view of persons created, which places non-reflective elements above the rational.[28] This hierarchy, which places bodily over mental knowing, fails to recognise the vital role both play in creating a balanced and holistic notion of personhood. For to over-emphasise either the mental and intellectual or embodied and physical dimension of humans leads to an incomplete and simplistic view of them.[29]

Furthermore, a purely phenomenological view of persons leaves them and others without an intelligible means of understanding the world and communicating with others. Individuals would not be able to describe reality without some agreed form of communication. Their understanding of the world would be limited to their own subjective perspective. If knowledge is primarily subject to personal interpretation and experience and there is no recognised ontological reality, then there is no common base for understanding the world, testing our experience and interpretation of reality, or interacting with others. If persons are fundamentally non-rational beings, and subjective experience is the essential means of understanding reality and different contexts, then there is no intelligible way of communicating with or about persons. Reality becomes completely subjective.

We can verify our assessment of reality by describing it to others and comparing it with their description. Our interpretation of reality can be checked against reality itself. If there is no objective agreement about reality, then knowledge, understanding, and meaning become subjective. If this subjective interpretation is the

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[26] See pp. 63-4, 93-5.
[27] See pp. 60-2. Benner and Wrubel, *The Primacy of Caring*, 41-2.
[28] See p. 81.
[29] For a more detailed discussion of holism see pp. 215-17.

only way to understand reality, then reality becomes relative to a particular individual, time and place. If reality is relativistic, there is no obvious way of interacting with, communicating about, or achieving a verifiable understanding of it.

Not only does rationality involve theoretical knowledge of ourselves, others and reality, but also a practical element. MacIntyre argues *phronesis* is a key virtue.[30] Choosing the relevant principles and applying them in particular contexts provides a basis not only for judgment itself, but the defence or justification of that judgment.

In exercising *phronesis*, we may appeal to what is fitting and appropriate, as these are part of determining what is reasonable. Principles, their application and our choices need to make sense within the context and with respect to the potential consequences. Our choices also must be appropriate to the persons involved, their natures and roles, the community, relationships and dilemmas involved and resources available.[31] So, being reasonable, making reasonable and justifiable choices, involves practical considerations in order to make sense and be fitting and appropriate.

Community or society provides a context for judgments, as shared standards of rationality and knowledge are found within them. A community helps make sense of being, knowing, and communicating. How would an individual, or others, ever know that he/she was rational unless there were common standards by which to judge rationality? For through rationality we experience, acknowledge and test our observations, perceptions, and reflections and express our understanding of the world. Rationality enables us to communicate these to others.

A crucial aspect of communication is explanation and justification. This dimension of rationality assumes we give reasons for our actions and that they make sense to other people. We assume agreed forms of justification, namely what counts

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[30] See p. 164.

as good or bad reasons for doing or not doing something. Yet, there is a deeper level on which justification operates. It is an accepted part of life, particularly in our Western culture, society and tradition. The fact that we expect people to justify their actions, that we do not question the basic appropriateness of requiring justification, highlights the universality of this conception. While we may query someone's right to call in question what we have done and to demand a justification on the grounds that they have no status or standing in the matter, we do not imagine that no one has the right to demand *some* kind of justification. This particular demand for justification may be queried, but not justification itself. Justification is assumed and linked to rationality, judgment, appropriateness, the context of a situation and an understanding of persons and relationships.

For Rawls, justification is a matter of the mutual support of many considerations and of "everything fitting together" into a coherent view.[32] Rawls stresses the need for considerations to make sense and to hold together in a coherent fashion. If the considerations do not make sense, they are incoherent. As rationality is vital to our making sense of the world, this coherence implies some form of rationality. That rationality is connected to what is appropriate and fitting. To be coherent and justified we need rationality *and* fittingness to make sense of things. Making sense of one part of such systems happens by testing its coherence with the rest of the system. Justification and explanation are in light of the whole system.[33]

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[31] See pp. 237-45.
[32] See p. 99-100. Rawls, *TJ*, 21, 579. See further discussion of this point on p. 238.
[33] This can be linked to the coherence theory of truth, where a statement cannot be understood appropriately or fully apart from its place in the whole system. The truth or falsity of a statement or conception depends on it fitting in with the whole system. See Bradley, *Appearance and Reality* and *Essays on Truth and Reality*.

The rationality, self-knowledge, practical judgments and justification of persons have been examined. To avoid placing undue weight and value on their rational capacities, other sources of individuals' worth need to be investigated.

Intrinsic Worth

As argued, one possible source for valuing persons rests in their having or exhibiting certain capacities.[34] Downie and Telfer stress the role of capacities in valuing persons.[35] This view leads to basing human worth on desert and merit regarding capacities. As individuals possess capacities to differing degrees, this view leads to a hierarchy of persons, where some are valued above others. This scenario leaves the "less capable" and "less worthy" individuals at risk of being marginalised, ignored and exploited.[36]

For example, a patient may have locked-in syndrome and be unable to exhibit self-determination, form or pursue ideal values, or make choices and commitments.[37] The patient could be fully aware of everything taking place around her, but be unable to indicate that awareness in any way. This patient might know whether she wants to live or die, possessing the capacity for self-determination or forming values, but be unable to communicate this self-determination to anyone else. Alternatively, another patient might be unconscious and unable to determine anything about her life or formulate any values. Under Downie and Telfer's notion of respect for persons, both these patients are unable to exhibit any of the necessary capacities, and would be at

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[34] See pp. 208-9.
[35] See p. 209. Downie and Telfer, *Caring and Curing*, 38-9, 41.
[36] See pp. 63-4, 81-2. Downie and Telfer recognise the variation in capacities and distinguish between "normal" and "sub-normal" human beings.
[37] See pp. 63-4. Downie and Telfer, *Caring and Curing*, 38-9.

risk of being under-valued, deemed unworthy and potentially harmed. This points to the need for a more adequate base for valuing human beings.

Rawls stresses the role of capacity in assessing individual worth. The capacity for a sense of justice is a minimum requirement for being entitled to equal justice and liberty and for moral personality.[38] The capacity for moral personality is a "sufficient", but not "stringent", condition for being entitled to equal justice and liberty.[39] Rawls acknowledges some persons do not possess the capacity for moral personality,[40] but does not elaborate on who they might be. They might include the severely mentally handicapped and mentally insane. Rawls does claim those with "lesser capacity" should be given the "full protection of justice".[41] Rawls rightly notes the need to provide protection for them, which includes protection from others or themselves. One danger is the individuals who do not meet his minimum capacity and requirements would not be entitled to the same benefits as others. Rawls accurately emphasises the need for an agreed minimum standard in society which is linked to protection for all members, particularly the vulnerable, but his basis for this claim seems unstable.

Although Rawls has an underlying Kantian view of individuals, his emphasis on capacities may obscure this basis in his theory.[42] Kant believed that individuals should be treated as ends in themselves and never only as means.[43] All human beings have dignity and unconditional worth.[44] If something has a price, it can be replaced

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[38] See pp. 104. Rawls, *TJ*, 506-7.
[39] See pp. 104. Rawls, *TJ*, 504-5.
[40] See pp. 104. Rawls, *TJ*, 506.
[41] Rawls, *TJ*, 506.
[42] See pp. 104-5. Rawls, *TJ*, 179-80.
[43] Kant, *The Foundations of the Metaphysics of Morals*, 54. Paton, *The Moral Law*, 32. In relation to ends Kant discusses hypothetical and categorical imperatives (36, 44). See also Paton, *The Moral Law*, 27-30.
[44] Ibid., 60. See pp. 64-5. Blustein argues it is a morally significant fact that individuals are the particular persons they are and have intrinsic and unique value as such. See Blustein, *Care and Commitment*, 203.

by an equivalent. If something is above price, and there is no equivalent, then it has a dignity.[45] For Kant,

> ...that which constitutes the condition under which alone something can be an end in itself does not have mere relative worth, i.e., a price, but an intrinsic worth, i.e., dignity.[46]

For Kant, humanity, as far as it is capable of morality, has this dignity.[47] This implies that Kant requires people to possess and exhibit some moral capacity in order to have dignity. Although there seems to be a tension within Kant's work between the intrinsic value and dignity of humanity and a capacity for morality, his main emphasis is that human beings are not replaceable and do have intrinsic worth.[48] Recognising this worth and dignity serves as a means of protecting people, as individuals would not have to prove themselves by exhibiting capacities, but would have value simply in being human.

Some authors place value on persons because they exhibit certain capacities, like rationality and moral personality. The dangers of this view support the need to protect the 'less capable'. One way of ensuring all people are not endangered, rejected or exploited, and offering a basis for just, fair, and equitable treatment, is acknowledging the intrinsic worth and dignity of persons. Recognising this value provides a foundation for an holistic view of them.

Holism

To gain and maintain a balanced understanding of persons, we must recognise they are complex and multi-dimensional.[49] Persons are rational, emotional, physical and spiritual. A danger of focusing too heavily on some aspects of persons and not

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[45] Ibid., 60.
[46] Ibid., 60.
[47] Ibid., 60.
[48] Ibid., 60.

others, is of being simplistic in our understanding of them. This over-simplification can lead to reductionism, where we view persons through a particular aspect or aspects of their being. Reductionism views people only in a narrow way, diminishes our understanding of their value or worth.

In contrast to reductionism, MacIntyre argues for the unity of a human life.[50] He also notes the effect on persons when they are reduced to the roles they perform. The unity of their life disappears.[51] The person of integrity has a life which involves "wholeness, entireness, completeness".[52] In contrast, if we view persons only with respect to their roles we lack a balanced and complete understanding of them and are, therefore, unable to relate to them in a holistic way. Such a reduction of persons and lack of awareness of their integrity may lead to treating them in inappropriate or even harmful ways.

To treat people appropriately and holistically involves both their protection and well-being. That requires both minimum standards of protection and restraint of harm and maximum standards which facilitate people's flourishing.

MacIntyre views flourishing as *eudaimonia*, and ties it to the exercise of the virtues.[53] He accurately stresses the importance of community for exercising the virtues[54] and achieving *eudaimonia*.[55] Individuals might be able to exist and survive in isolation, but they would be unable to thrive and flourish. The idea of well-being and flourishing is most productively based within community and relationships. For this community to exist and survive, people must recognise a fundamental, minimal

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[49] See pp. 131, 185
[50] See pp. 147-8. MacIntyre, *AV*, 204-5, 218-9.
[51] See pp. 147-8. MacIntyre, *AV*, 204.
[52] See pp. 54-5, 163. J. A. Simpson and E. S. C. Weiner, *The Oxford English Dictionary*, 2nd ed., (Oxford: Clarendon Press, 1989), 1066. MacIntyre, *AV*, 203.
[53] See p. 165-6. MacIntyre, *AV*, 148-9. Cf. Finnis who connects flourishing to human goods, friendship, rights and community. Finnis, *Natural Law and Natural Rights*, 87, 144, 192, 219-20, 380.
[54] See p. 149. MacIntyre, *WJWR*, 103 and *AV*, 147-8.
[55] See p. 149, 165-6. MacIntyre, *WJWR*, 107-8.

responsibility of non-maleficence to others.[56] People also may need to recognise a maximum, or ideal, of seeking not only their own, but others' well-being. For, if everyone is primarily seeking their own well-being, then only a proportion of society will flourish, namely the strong, cunning, and assertive. This is because weaker or 'less capable' members of society might need the aid of others to attain well-being. These members could be placed in particularly vulnerable positions and at a great risk of being ignored, exploited or marginalised. This argument for a maximum in community is pragmatic. There also may be a principled foundation for such a maximum, e.g. we have a responsibility or duty to aid others' well-being and flourishing.[57]

A holistic notion of persons acknowledges their many dimensions and seeks to avoid being reductionistic or simplistic. It enables people to gain a more complete and balanced understanding of others, minimum and maximum standards of interaction, recognise people's integrity, value them appropriately and respond to them in ways which contribute to their flourishing. Meeting these standards is successful within a community which values individuals and relationships.

Relatedness and Community

One important feature of community is having shared values and ends which members recognise.[58] This provides a common goal or vision. Rawls claims in a social union, or community, the shared end is not merely a common desire for the same particular things. He states

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[56] The concept of non-maleficence can be found in Kant. See Paton, *The Moral Law*, 31-2.
[57] For instance see Rawls' discussion of the Kantian notions of duties for mutual aid and respect, p. 109-10. For further discussion of minimum and maximum responsibilities see pp. 223-9. Both the pragmatic and principle base for this maximum are evident in the health care professions.
[58] See p. 94, 149. Rawls, TJ, pp. 526-7. MacIntyre, *AV*, 156.

The essential thing is that there be *a shared final end and accepted ways of advancing* it which allow for the public recognition of the attainments of everyone. When this end is achieved, all find satisfaction in the very same thing; and this fact together with the complementary nature of the good of individuals affirms the tie of community.[59]

One difficulty with this requirement of shared ends and means is finding a way to agree them within a pluralistic society.[60] There are at least two different levels of difficulty here. First, there are many different ends and values which may be incompatible and conflict. Secondly, even if we could identify shared ends and values, it may be difficult to agree the means of advancing them.[61] For example, people might agree on the value and sanctity of human life. Yet, they might disagree on the best means of upholding this value. Some might claim maximising individual freedom is the best means of achieving it, while others might argue minimising harm is vital. While acknowledging the reality of such disagreement, people seem to recognise that some agreed minimum and maximum standards are necessary for a community or society to function and flourish.[62]

Individuals do not live in vacuums.[63] MacIntyre argues it is always within some particular type of community that we learn or fail to learn to exercise the virtues.[64] A community has a role, whether positive or negative, in shaping our moral character and interaction with others.[65] A community, whether personal or

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[59] See p. 94. Rawls, *TJ*, 526. Emphases added.
[60] See pp. 183-4.
[61] See pp. 129.
[62] See pp. 223-9. Also Cook, *Dilemmas of Life*, 62.
[63] Rawls discusses the social nature of humanity. See p. 105. Rawls, *TJ*, 438, 522-3. Cf. Conford, *The Personal World: John MacMurray on self and society*, 71. MacMurray not only believes "the isolated, purely individual self is a fiction", but that we become persons in community, in relation to others, and that human life is inherently a common life. He also states our freedom as individuals depends on the co-operation of others. Furthermore the whole apparatus of our life is provided by others, and elements including material resources, language, thoughts, ideals are only partially our own (164-5).
[64] See p. 149. MacIntyre, *AV*, 194-5.
[65] Cf. Finnis who states that community is a "means" indispensable to the realising of most aspects of human well-being. Community is part of human flourishing. Finnis, *Natural Law and Natural Rights*, 192, 380.

professional, contributes to and affects an understanding of ourselves and others and helps us determine what is appropriate and inappropriate.[66]

Within a professional community, the behaviour of a doctor who falls in love with one of his patients and acts on these feelings would be deemed inappropriate. If he continued to treat her, his personal feelings and involvement would confuse the proper boundaries of the doctor-patient relationship. He also might take advantage of his position and inappropriately pressurise the patient. The professional community has guidelines and standards which define the appropriate nature of a professional relationship.[67] If the patient was from another surgery, the doctor could avoid the risk of his professional judgment being inappropriately affected by his emotions, taking advantage of his role and blurring the appropriate personal and professional relationship. Different factors within a community and communities[68] help determine whether a situation, action or relationship is appropriate or inappropriate, including setting, context, professional standards and requirements, expectations and responsibilities.[69]

A vital aspect of community is the relationships which comprise it. Gilligan claims women view relationships as important and interconnected,[70] which affects their interactions with others. Gilligan accurately notes the connectedness of people, highlighting that our perspective of how we relate and are related will influence our interactions with others. Our perspective of how people function and operate in society, as single or inter-connected individuals, will affect our relationships with and

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[66] The impact of community in judging appropriateness can be paralleled to that of culture. See pp. 203-6, 211-12.
[67] General Medical Council, "Professional Conduct and Discipline: Fitness to Practice," (London: GMC, 1992).
[68] There are at least three different communities with which the doctor is involved: the professional community of other doctors, the inter-professional community of his surgery, and the personal community of his loved ones and friends.
[69] See pp. 203-8.
[70] Gilligan, *DV*, 19, 73. See p. 5.

expectations of others. A nurse might refuse to follow a consultant's request to administer a drug dosage which she knows would kill the comatose patient. She has a professional responsibility to make her own clinical judgment about the appropriateness of the dose and a professional liability for the injection she gives.[71] As part of a clinical team, the nurse's refusal conflicts with the consultant's instruction. The nurse also is part of a professional community with standards regarding appropriate and inappropriate levels of medication. As an individual, the nurse serves as an advocate for the patient and family's wishes. These different levels of relationship affect the nurse's expectations and actions, and involve both her professional clinical judgment and personal care and can conflict.

Rawls also notes the importance of expectations in our relationships with one another. He argues people are "chain-connected" and their expectations are "close-knit".[72] If we fail to recognise that we are connected and that our decisions and actions affect others and their expectations, one danger is of ignoring potential consequences to and conflicts with others. For example, one nurse thinks she should provide euthanasia for a patient, while another nurse believes palliative care is the best option. That both nurse and patient recognise the nurse is actually part of a professional community, with certain expectation and standards, is imperative. These standards provide minimum expectations, protect the patient and nurse and help determine what is appropriate and inappropriate in professional relationships. They may also point in the direction of an ideal nurse and nurse-patient relationship, which is more of a maximum standard.

Recognising we are part of a community and in relationship entails a degree of mutuality and reciprocity. Noddings advocates reciprocity within personal caring

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71 "The Code of Professional Conduct for Nurses, Midwives and Health Visitors," UKCC.

relationships and claims is it necessary.[73] Noddings supports not only the expectation of reciprocity, but the *requirement* of it.[74] In contrast, there are at least two categories of non-reciprocal individuals: those who are *unable* to reciprocate and those who *choose not* to reciprocate.[75] The first includes people who are unconscious, and it seems difficult to require reciprocity from them. For the second type, it seems unclear what type of sanctions we could impose which would *make* them become reciprocal. Yet, if an individual has no concept or awareness of reciprocity at all, we think there is something wrong. We view them as amoral or psychopathic.[76] So, some notion and appreciation of reciprocity and mutuality is important.

Perhaps we ought not to require specific types or views of reciprocity, particular actions which qualify as reciprocal or not, but rather require an *awareness* and *recognition* of it. This awareness may be part of what it means to be moral beings and contribute to a minimum standard of what it means to be in relationship and belong to a community.

Exploring reciprocity in relation to needs in a professional realm, Campbell argues the core of reciprocity is that both parties have needs and receive something through their interaction.[77] Recognising this situation helps avoid imbalance and maintain reciprocity.[78] It may be important to recognise needs on both sides of a relationship, as they can be appropriate or inappropriate. It could be inappropriate for the carer to function in a professional context to fulfil her needs. A nurse who needs to be in control can inappropriately influence her patient's decision or choices. She

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[72] See p. 90. Rawls, *TJ*, 80.
[73] See pp. 48-9. Noddings, *Caring*, 68, 71. Noddings does not explicitly elaborate on how caring is fulfilled in this passage. She seems to imply that the cared-for must recognise that the one-caring is caring in some way for it to be true caring.
[74] See pp. 48-9.
[75] These categories may be similar to those of non-contributing members of a community.
[76] Such individuals might be placed in prison or mental hospitals.
[77] See p. 49. Campbell, *Moderated Love*, 105.
[78] See p. 49. Campbell, Moderated Love, 106.

might present treatment options in a forceful way which is extremely difficult for the patient to question. The patient might simply agree to do what the nurse advocates. The nurse would be undermining and not valuing the patient's wishes and autonomy. It is about requiring reciprocity and having an awareness of appropriate and inappropriate aspects of a reciprocal relationship. At least a minimum line must be drawn.

Reciprocity in relationships involves a certain level of commitment to other persons. People can make a commitment because they care for or have an interest, whether personal or professional, in another. Noddings accurately emphasises the importance of making a commitment in caring, because feelings of caring or engrossment are not sustained.[79] Yet, her assumption that people will do this is optimistic,[80] and her definition of committing for an appropriate time span is vague.[81] Instead of basing commitment on feelings or an ambiguous time span it is preferable to explore commitment as a rational and volitional decision.[82] If people *decide* to make a commitment, then they are more likely to recognise responsibilities in relation to others.

One aspect of commitment involves accountability.[83] MacIntyre's view of accountability is connected to providing an intelligible[84] and justifiable explanation of our actions to appropriate people, i.e. those entitled to ask for or require justification. Accountability also involves being committed to others and fulfilling our responsibilities, or providing acceptable reasons why we are unable to do so. It means we are answerable to others. The justifications we offer will be judged as acceptable

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[79] See p. 54. Noddings, *Caring*, 16.
[80] See p. 71.
[81] See p. 54. Noddings, *Caring*, 16.
[82] See pp. 53-4. Tschudin, *Ethics in Nursing*, 8-9.
[83] See pp. 148-9. MacIntyre *AV*, 209, 217-18.
[84] See pp. 148-9. MacIntyre's, *AV*, 209, 217.

or unacceptable, based on the communal or societal standards. Accountability also means others are required to offer acceptable, rational justifications for their actions. As each person knows he/she is answerable to others for his/her decision and actions, accountability may help limit harm done to others in a community.

Shared values and ends, connectedness, reciprocity, commitment and accountability, are important to relationships between individuals and the community as a whole. These elements give rise to the need for minimum and maximum standards and responsibilities.

Responsibilities

Fulfilling responsibilities makes sense within relationship and community and involves reference to minimum and maximum standards. Gilligan and Tschudin accurately recognise a connection between responsibilities and relationships.[85] Tschudin also argues responsibilities are related to duty, rights and freedom.[86] They can be positive, related to care and benefit, or negative, linked to restraint of harm.[87]

According to Tschudin, both persons and institutions can have responsibilities and these sometimes conflict.[88] Gustafson and Laney argue the process of decision-making sometimes involves conflicting responsibilities. Different levels of responsibility in a community or society may require developing a hierarchy of responsibilities to aid decision-making and prioritisation when they conflict.

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[85] See pp. 5, 52-3. Gilligan, *DV*, 73. Tschudin, *Ethics in Nursing*, 74-5. Gustafson and Laney, *On Being Responsible*, 4-5. Gilligan who argues women construct morality in terms of relationships and responsibilities rather than abstract rights and rules. Tschudin states being responsible involves a personal aspect and engaging with people.

[86] See pp. 52-3. Tschudin, *Ethics in Nursing*, 74-5. Although responsibilities can be discussed in relation to rights, we have argued human rights should not be confused with human freedoms. See pp. 195-7.

[87] See pp. 52-3. MacIntyre argues against and differentiates rights claims from need, want and benefit. See pp. 144-5.

[88] See pp. 52-3. Tschudin, *Ethics in Nursing*, 75-7.

Resolving such conflict involves asking what is an appropriate responsibility to and for people and things.[89]

Part of the inter-relatedness and interactions of people involves mutual expectations[90] and mutual responsibilities. Gustafson and Laney note that habituation plays a key role in facilitating communal existence and interaction, as we respond with customary reactions and assume that others also will respond in this appropriate way.[91] Appropriateness can be determined by parents, schools, community, wider culture and society which contribute to such habituation. Within our own context, we are either taught explicitly or implicitly how to fulfil our responsibilities and the types of behaviour which are acceptable or unacceptable.[92] The appropriateness of our behaviour and responsibilities is influenced and affected by our context and community.

One specific area where old habits and patterns of behaviour can fail is in relation to new problems in society. Gustafson and Laney rightly stress the need for reflection on responsibilities in these new dilemmas.[93] With new technology we can screen pregnant women and their foetuses for genetically inherited diseases, like Huntingdon's Chorea. Previously, the child would have to be born, and maybe even reach adulthood, before the disease could be detected. Now we have to decide whether to screen or not to screen and where our responsibilities, for the screen results and the actions taken, as individuals and a community lie. New dilemmas involve new responsibilities.

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[89] Gustafson and Laney, *On Being Responsible*, 7.
[90] Ibid., 4.
[91] Ibid., 5.
[92] See pp. 203-8.
[93] Gustafson and Laney, *On Being Responsible*, 5. See p. 53.

Regarding responsibilities, Rawls speaks of duties as being positive or negative,[94] which parallels beneficence and non-maleficence. This distinction of responsibilities may play a key role in discerning what is appropriate to and from people both on a minimal and maximal level. For a patient, appropriate treatment from a nurse or doctor involves minimally not causing harm. The patient also expects that the nurse or doctor will try to do good and to cure him, if possible, which seems a maximum aim. There is a difference between a nurse who minimally tends to a patient's physical needs and one who relates holistically to him/her. We need to recognise some minimum standards which limit harm to persons and maximum standards which have the aim of beneficence, ultimately contributing to persons' flourishing.

A minimum standard of doing no harm to people ensures that the vulnerable are not exploited, ignored, or marginalised. Rawls is concerned for the least advantaged members of society.[95] He builds into his theory of justice protection for them, arguing social and economic inequalities are to be distributed so they are to the greatest benefit of the least advantaged in society.[96] In agreeing with the importance of protecting the least advantaged and vulnerable in society, the need for responsibility which surpasses the socio-economic realm is emphasised. We cannot isolate the socio-economic level of personhood without being reductionistic and, instead, we need to protect persons on all levels whether physical, mental, emotional, or spiritual. So we need a notion of responsibilities which is more extensive than Rawls appears to offer.

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[94] See pp. 109-10. Rawls, *TJ*, 114.
[95] See pp. 86-8.
[96] See p. 86. Also Rawls, *TJ*, 15, 302. MacIntyre takes issue with Rawls' notion of distributive justice based on equality with respect to needs and the 'worst-off' sector, and notes that Rawls' conception of justice leaves no room for the notion of desert. See p. 160. MacIntyre, *AV*, 247-52.

A wider notion of responsibility involves balancing the needs of all members of a community or society. This happens on both micro and macro levels regarding resource allocation. In health care with limited resources,[97] a doctor and nurse may have a responsibility to balance one patient's need for a hip replacement with another patient's need to have heart surgery. On another level, a hospital must balance the needs of all its different departments, its nurses, doctors, managers, patients and their families. On a macro level, the National Health Service as a whole must decide both whether to focus, in principle and practice, more on preventative or curative measures and treatments and which particular areas will receive the greatest portion of the resources allocated. So responsibilities, particularly regarding allocating limited resources on macro and micro levels, involve prioritising needs.

Downie and Telfer usefully distinguish between absolute and relative needs. This distinction can prevent people from demanding all their needs be met in the same way and to the same extent.[98] As the material, financial, and relational resources are limited in society, and people's needs often seem unlimited, it would be helpful to have some means of prioritising and judging between various needs. One such ordering is found in Maslow's work.[99] We might not accept or agree with Maslow's exact ordering, but it provides a general guideline for prioritising needs. We must recognise that basic, physiological needs, like food, clothing and shelter have to be met for everyone in a community to function and survive. Then we can address safety needs, or keeping people from doing harm to others or themselves. The level of social

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[97] See Donna Dickenson, "Is Efficiency Ethical? Resource Issues in Health Care," in *Introducing Applied Ethics*, ed. Brenda Almond, (Oxford: Blackwell, 1995), 229-46. Roger Crisp, David Ebbs, and Tony Hope, "The Asbury Draft Policy on Ethical Use of Resources," British Medical Journal 312 (1996) : 1528-31. J. F. Kilner, *Who Lives? Who Dies?*, (New Haven: Yale University Press, 1990).
[98] See p. 46. Downie and Telfer, *Caring and Curing*, 29. See also pp. 192-3 for discussion of this area.
[99] See pp. 78-9. Lyttle, *Mental Disorder*, 134-5. Also Kate Robinson and Barbara Vaughan, *Knowledge for Nursing Practice*, (Oxford: Butterworth-Heinemann, 1992), 100-9. Robinson and Vaughan discuss Maslow's hierarchy of needs in relation to nursing practice.

needs addresses areas like education and jobs which are important for the preservation and development of a community. After these levels of needs are met, then we might be able to concentrate on higher level, self-actualisation needs. To attend to self-actualisation needs, for Maslow, implies a holistic view, as all levels of needs must be met before focusing on this level and to achieve the flourishing of a person. Meeting basic and safety needs can function as minimum responsibilities, while higher level needs are linked to maximum responsibilities and the flourishing of individuals and community.[100]

Not only within a society generally, but within the health care community more specifically, it seems vital to have some prioritisation of needs. One example is triage nurses who have been introduced to rationalise and prioritise resource allocation in response to different levels and urgency of need in Accident and Emergency Departments. A triage nurse in accident and emergency receiving patients must be able to prioritise the time frame of their treatment. She must assess which patients' needs are urgent and life-threatening, e.g. a heart attack, serious but not life-threatening, e.g. a broken leg, and minor injuries, e.g. scrapes and bruises. This ability to prioritise needs and levels of need is a vital one in a community with limited resources, both personal and professional.

In contrast, within the professional realm, Downie and Telfer seem to imply a responsibility to meet all needs. Yet, just because someone makes a claim or demand on a professional community does not *necessarily* mean there is a correlative responsibility to meet it.[101] The need to have open heart surgery is necessary for survival, while the need to have cosmetic surgery is not. Furthermore, even if there

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[100] See pp. 78-9.
[101] See p. 47. Downie and Telfer, *Caring and Curing*, 11-2.

was a responsibility to meet all needs, there do not seem to be sufficient resources to do so.

Limitations in meeting needs involve time, energy, knowledge, skill, financial or other resources.[102] It is important to explore some limits within care and caring in relation to both minimum and maximum standards. The care offered by people and communities, whether from government, professions, or individuals, is not usually unconditional, but has limits or requirements which people must abide by to receive care. Most governments do not provide unlimited support and care for the unemployed, as social security benefits are given in limited amounts and in response to fulfilling particular requirements. A government may refuse to care for unemployed people unless they can prove they are seeking employment. In health care, a nurse does not provide unconditional or unlimited care for a patient. She will not do anything or everything a patient requests. She will refuse if a patient asks her to masturbate him, on both professional and personal grounds, to avoid sacrificing her integrity as a nurse and a person. There may be many reasons for limiting care, including professional, personal, practical, emotional, and physical limitations.

While exploring these limits as part of the minimum standards of care, it is important to examine responsibility which functions above these minimums. We have a responsibility to care for others in some way, and caring, as well as justice, involves a recognition of our specific responsibilities, both minimally and maximally.[103] Blustein usefully discusses different types of care. To "have care of" includes the responsibility for supervising, managing, providing for, attending to

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[102] See Gustafson and Laney, *On Being Responsible*, 7-9. They argue for the necessity to accept limitation, finitude and contingency in moral life because we are finite and limited beings. Part of acknowledging our limitations is recognising conflicts in responsibilities and needs. They claim one way of deciding between these conflicts is to assess to whom and for what one is responsible.
[103] See pp. 137-40. For further discussion of both types of standards see pp. 230-7.

needs, or performing services.[104] Caring-about involves wanting to do something that will benefit, enhance or keep the other from danger.[105] Caring-about highlights the responsibility to help the other benefit and flourish, as well as minimise harm and offer protection. "Having care of" others usefully incorporates a recognition of particular needs and responsibilities in taking care of them. So, care is connected to responsibility, needs, benefits and limiting harm.

The idea of care requiring people to be careful of, to care for, or to take care of others is fruitful in relation to minimum and maximum, negative and positive responsibilities. These notions deal with the way in which we treat others and we can specify what they mean within particular frameworks or standards. For a nurse to care for or take care of her patients means that she provides food, warmth and comfort for them.[106] She takes care of them by helping meet these basic needs. This is part of the nurse's responsibility to fulfill professional standards, and she can be assessed in relation to them. These minimum levels of care are required of her in a way that a maximum level of care cannot be required.

Responsibilities are connected to relationships and community and can be positive or negative. Conflicting responsibilities and limited resources support the necessity of prioritising responsibilities. This involves assessing their appropriateness to, for and from people and institutions, and examining levels of need. The responsibility to care incorporates both minimum standards, including non-maleficence and protection, or maximum standards, focusing on benefits and flourishing. Both types of responsibilities and standards are linked not only to care, but also to justice.

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[104] See p. 39. Blustein, *Care and Commitment*, 27-8.
[105] See p. 39. Blustein, *Care and Commitment*, 28-9, 32.
[106] "United Kingdom Code of Professional Conduct for Nurses, Midwives and Health Visitors," UKCC.

Principles of Justice

Justice contributes to negative and positive standards in a community or society.[107] It provides minimum standards which deal with negative responsibilities and should apply to all persons, which include refraining from harming others and protecting the vulnerable.[108] Justice also can serve as a maximum goal or final aim in the sense of providing total justice for all people.

Within a minimum standard, justice is linked to distribution. Rawls advocates this type of justice as a means of protection for socially and economically vulnerable members of society.[109] Rawls' view is inadequate, so a notion of justice will need to be more extensive if we are to interact with people in appropriate ways.[110]

> Regarding Rawls' distribution, MacIntyre claims
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> Rawls makes primary what is in effect a principle of equality with respect to needs. His conception of 'the worst-off' sector of the community is a conception of those whose needs are *gravest* in respect of income, wealth and other goods....For Rawls how those who are now in *grave* need come to be in *grave* need is irrelevant; justice is made into a matter of present patterns of distribution to which the past is irrelevant.[111]

This notion of "grave" need is emphasised and may mean basic or minimally necessary needs.[112] Basic needs can be those necessary for survival, without which people will die, e.g. food. This description involves a comparative element as some forms of meeting needs are more basic than others, e.g. providing a sandwich versus a gourmet meal. A second type of basic need means an urgent or emergency one, e.g. needing to have someone's appendix removed.

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[107] See pp. 121-7.
[108] See pp. 137-40.
[109] See pp. 225-6. Rawls, *TJ*, 302-3.
[110] See pp. 225-6. Also see pp. 215-17. For a more detailed discussion of Rawls' position see chapter 3.
[111] MacIntyre, *AV*, 248. My emphases. See Rawls, *TJ*, 302-3.

Rawls' position implies the disadvantaged 'need' to have inequalities, such as social, economic or educational inequality, levelled as members of a society. The advantaged also have 'needs', but their specific social, economic, and educational needs have already been met. Rawls' view could support positive discrimination if the disadvantaged demand to have their needs met in the same way as the advantaged. His conception of disadvantage shifts beyond a notion of basic needs,[113] and may confuse equality of goods with equality of opportunity.[114] Addressing needs with respect to opportunities is one aspect in a just and fair society, but not necessarily the most fundamental. People are at risk from harm in society and might be unable to make use of opportunities if they are weak and vulnerable. It could be the case that all are disadvantaged if they lack basic needs, but once these are met our notion of disadvantage might change. We might view disadvantage more in terms of lack of opportunity or benefits in a society. To assess positions of advantage and disadvantage regarding opportunity prior to meeting everyone's basic needs seems premature.

In discussing basic needs and the disadvantaged, a helpful basis for minimum standards incorporates equality with respect to needs. One way of addressing equality of needs in society is through institutions.[115] Rawls argues the best way to protect the disadvantaged and create a just society is to choose principles of justice, including equality, which will ensure institutions and structures are just.[116] If we are concerned

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[112] See p. 225.

[113] See pp. 46, 78-80.

[114] See pp. 86-8, 88-91. Rawls, *TJ*, 62, 92, 303. Rawls defines social primary goods as liberty and opportunity, income and wealth, and the bases for self-respect. He does seem to place goods like income and wealth in the same list as opportunity which implies the two types of goods, or needs in our discussion, are the same.

[115] We should note institutions can have dangers. Particularly within their bureaucratic structures and hierarchies people may be forced to serve institutions, rather than vice versa. This scenario may place individuals or groups at the mercy of institutions, rather than institutions serving to protect them.

[116] See pp. 88-91. Rawls, *TJ*, 504-5. He discusses equality with respect to justice as regularity, the application of equality, and the idea of equality and those beings owed the guarantees of justice.

to address needs, it seems reasonable to assume they can be met by or through institutions. As individuals may allow personal biases to affect their interaction with others to a greater degree if left to their own devices, part of the reason for creating institutions is to ensure equal treatment of people. Some notion of equality within institutions may be necessary for supporting a minimum standard of treatment of and interaction with people.[117] We want the National Health Service to ensure an equal basic level of treatment for all patients, i.e. providing food, warmth, control of pain, care and treatment.[118] The need for equality in institutions relates to equality for and from people.

Justice as equality is useful as part of a minimum standard of interaction. Equality guarantees that people can expect a basic minimum of equal and consistent treatment from others and institutions. Justice as fairness also contributes to this minimum standard.

Justice as fairness is an important conception for Rawls, as it is central to the principles which form the basic structure of society.[119] One way of utilising fairness is as a necessary, but not sufficient, condition for a minimum standard. It is necessary to ensure persons are not harmed or subjected to unfair treatment in society. Fair treatment involves viewing and treating like cases in like ways. Fairness allows for variation in style but not the content of how people are treated. It views unfair treatment of like cases as unacceptable and unjust. In not permitting unfair or unjust treatment of individuals, fairness provides a moral basis for restraining harm and protecting the vulnerable.[120]

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[117] Particularly as institutions also can have their own biases.
[118] Although feeding patients is now legally considered a medical treatment, some people still consider it a basic human need which should be met in hospital. Airedale NHS Trust v. Bland, [1993] 1 All ER 821.
[119] See p. 98. Rawls, *TJ*, 11.
[120] See pp. 124-6, 195-6.

Alternatively, justice as fairness might not be sufficient because treating people in the same ways may not always be appropriate or desirable. Issuing crutches to an eighteen and an eighty year-old, each with a broken leg, is fair but inappropriate, and even harmful, treatment. The younger person would be able to manoeuvre himself on crutches without difficulty, and recover within an average time span. The older person might not be able to manage the crutches, and might fall and injure himself further. In this instance apparently fair and equal treatment of two individuals may have harmful consequences. More than justice as fairness is required if we are aiming to deal with people in appropriate ways.

Justice as fairness also involves a minimum notion of desert, in the sense that all individuals deserve a minimum level of protection from harm, based on their intrinsic worth as human beings and as members of a society or community. This is not 'desert' in the sense of evaluating whether people are worthy to receive benefits or protection in society, based on capabilities, contributions and actions.[121] Instead of a notion of desert, entitlement might be more accurate. Because human beings have intrinsic worth, value and dignity they are entitled to a certain minimum standard of interaction and level of protection in society. If we agree persons are entitled to this minimum of justice, we argue they are entitled to have certain basic needs met, because without these basics they could not survive and function.

In contrast to justice as fairness and equality is the notion of equity. Downie and Telfer define equal consideration as consistent treatment between persons appealing to the same rule, or equity where there are justified differences of treatment.[122] Equity allows for justified differences in treating others, in response to

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[121] See pp. 123-4, 194-6.
[122] See pp. 46-7. Downie and Telfer, *Caring and Curing*, 76. Rawls recognises the need to justify departures from equality. See p. 126.

the specific, unique individuals and dilemmas in a given situation. Equity may be useful in discerning appropriate and fitting ways of dealing with others.

Downie and Telfer argue justified differences are based on variations in need, where like cases are treated similarly and unlike cases are distinguished for 'morally appropriate reasons'.[123] This necessity for justification is crucial, but Downie and Telfer do not elaborate on what constitutes "morally appropriate reasons".[124] It would be morally, and legally, inappropriate for a nurse or doctor to insist that an adult Jehovah's Witness receive a life-saving blood transfusion. Such action is inappropriate because it contradicts a competent patient's explicit wishes regarding her own best interests and would be treating her against personal, moral or religious beliefs. The argument relates not only to best interests but also autonomy. It is in our best interests to have our autonomy recognised and harmful for our autonomy not to be recognised. We must be free to make our own choices, even if they are harmful ones. To ignore or over-ride the adult Jehovah's Witness's autonomy and view of best interests would be inappropriate. In contrast, it would be morally, and legally, appropriate to insist a child of a Jehovah's Witness is given a life-saving blood transfusion. This would be in the child's best interests, and may or may not conflict with his autonomy, as without the transfusion he would die. Furthermore, there are different senses of the child's best interests depending on who decides, the parents or clinicians. The latter view life as in the child's best interests, as opposed to some form of eternal merit. Failing to treat the child would cause great harm to him and, thus, be inappropriate and unjustifiable.

Determining what is equitable and appropriate in a given situation may involve different levels and standards which are legal, professional, cultural, or social.

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[123] Downie and Telfer, *Caring and Curing*, 76.

Legal standards of interaction may provide the category of minimum justice, as the law often focuses on restraining harm to people. Legally we are not allowed to injure others, steal from or slander them. These areas deal with restraining harm to others, whether physically, materially, professionally, or psychologically. We are also legally restrained from harming ourselves, as we must wear seat-belts and motorcycle helmets.[125] In restraining harm to individuals, the standards of law not only define limits, but contribute to considerations of appropriateness and inappropriateness.

Rawls recognises two standards of assessing appropriateness. He believes that guaranteeing the establishment of a just society, through the selection of his principles of justice, and applying them to particular situations is appropriate.[126] The first level of appropriateness focuses on setting up standards themselves. This level is concerned with which standards are to be adopted in society and which arguments support them and their justification. The second level of appropriateness focuses on applying these standards to particular cases and vice versa. These two ways and levels of expressing appropriateness need to be carefully distinguished.

Another level of standards for determining what is equitable or appropriate are professional ones.[127] They are guidelines for behaviour and interaction with clients and colleagues below which a professional should not fall and may also have direct legal implications. If a professional does fall below these standards, sanctions or disciplinary actions are taken. In health care, disciplinary actions may include things like severe reprimands, or being struck off. For example Dr. Nigel Cox committed

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[124] Ibid., p. 76.
[125] Suicide is a good example. Interestingly, until 1961 suicide was illegal, but is no longer. The change in law was based on the view that if an individual was not successful, then the courts were an inappropriate place to deal with him. The appropriate setting was viewed as the psychiatric and psychological arena. They aim still being to restrict self-harm, but not through legal reprimand or punishment.
[126] See pp. 86-97.
[127] For example the UKCC and GMC Guidelines.

euthanasia on an elderly woman, allegedly with her consent, and recorded his fatal dosage of potassium chloride in his notes.[128] A nurse reported his action to the hospital.[129] He was charged with attempted murder, found guilty, but given a suspended sentence.[130] In the professional arena, Dr. Cox was severely reprimanded by the General Medical Council, as they viewed his treatment of this patient as inappropriate.[131] The nurse's decision to report Dr. Cox demonstrates her judgment that he had fallen below the professional and legal standard and his action was unacceptable. He claimed to be doing good to the patient, but killing her was viewed as being harmful. Within professional standards there are different elements considered in assessing what is just, equitable and appropriate including guidelines from law, a professional body and colleagues.

Cultural and social standards also contribute to an assessment of what is appropriate.[132] In some patriarchal African and Muslim cultures clitorectomies are performed on young women. The procedure is done to control their sexuality by removing a large degree of their sexual pleasure. In these cultures, a clitorectomy generally is considered an acceptable, appropriate and expected practice. In our Western culture and society, by contrast, clitorectomies are seen as highly unacceptable because we do not believe such patriarchal controls over women, their bodies and sexual pleasure are appropriate ways of treating them. As well as pointing out cultural variation regarding what is acceptable and appropriate, this example

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[128] Clare Dyer, "Rheumatologist Convicted of Attempted Murder," The British Medical Journal, 305 (1992) : 731.
[129] The fact that it was a nurse who reported him may not be surprising given the strict professional standards of conduct set out and enforced by the UKCC for nurses.
[130] The sentence was suspended because the body had been cremated and so it could not be proven that the dose of potassium chloride was the cause of death. What could be proven was Cox's intention to kill her from his notes.
[131] Clare Dyer, "GMC Tempers Justice with Mercy in Cox Case," The British Medical Journal, 305 (1992) : 1311. The GMC required him to re-train in the area of palliative care, to bring his professional conduct up to the required standard of treating patients.
[132] See pp. 203-6.

raises a more general difficulty of conflict between the individual and collective or communal good. For each young woman who must be put through this painful and medically unnecessary procedure the practice does not contribute to her individual good directly. The good which is served is a value held by the larger community.[133] The young woman might share the value of the community and believe the procedure to contribute to her individual good. It is likely she will be harmed or shunned by the community if she rejects its values and chooses differently. This tension emphasises the levels which contribute to judgments about appropriateness. They include restricting harm to people on cultural, physical, mental, legal and emotional levels.

Regarding justice, a minimum standard that serves to restrict harm to people and meet their basic needs, including equality and fairness, was supported. Treating people the same does not always fulfil the criteria of avoiding harm, so equality and fairness alone are insufficient. Equity helps decipher morally justified reasons for treating people differently, through legal, professional and cultural standards. Equity is vital in ensuring our interactions with others are acceptable and appropriate. All three types of justice are vital to a middle way .

Appropriateness

There are various elements within the nature of appropriateness. Fittingness and decorum will be key themes in judging what is appropriate to the context of a situation, nature of the individuals involved, their roles and values, and nature of the cultural community. All of these factors are part of determining what constitutes an appropriate decision and action.

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[133] The young woman might be unaware of any alternative choice or view of her body and well-being.

An important means of determining what is appropriate involves seeking what is fitting, as Cook accurately states

> There is an old-fashioned expression which sums up appropriateness appropriately: 'It ain't fitting'. Appropriateness is what is fitting....Our response must be appropriate to the particular context, noting that in most situations there are multi-levelled contexts.[134]

What is fitting is a useful way of discovering what is appropriate to the context of a particular situation.[135]

There are different views of "fittingness", one of which comes from natural law.[136] Natural law theory advocates all things should "follow nature" and the whole universe is governed by laws which exhibit rationality. Man has the capacity to choose whether to obey or disobey these natural laws, but he acts in accordance with reason only if he obeys them.[137] Thus his actions are deemed fitting and reasonable only if and when he abides by natural laws.

Cicero, as a proponent of natural law theory rightly notes the importance of "decorum", or fittingness.[138] He distinguishes general "decorum", which is apparent in every good action, from particular "decorum", which is appropriate to a particular action.[139] Furthermore, "decorum" can be seen in all our deeds, words, and in physical movement and bearing. It is apparent in natural beauty, the due order of parts, and the outward embellishment suited to the appropriate function, according to

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[134] Cook, *Responsible Decisions*, 12.

[135] Cf. Niebuhr, "The Meaning of Responsibility," 31. Niebuhr claims in an ethics of responsibility the fitting action is alone conducive to the good and the right. The fitting action is one that fits into a total interaction as response and as anticipation of further response. Gustafson and Laney also point out in their introduction that Niebuhr's notion of fittingness in response suggests we determine what action is most appropriate in light of our interpretation of a given situation (12-3).

[136] See pp. 146-7. For more general discussions of natural law theory, see Stephen Buckle, "Natural Law," in *A Companion to Ethics*, ed. Peter Singer, (Oxford: Blackwell, 1996), 161-73. Richard Wollheim, "Natural Law," in *The Encyclopaedia of Philosophy*, vols. 5-6., ed. Paul Edwards, (New York and London: Macmillan, 1967), 450-3.

[137] In contrast to humans, inanimate objects obey the laws of nature out of necessity, and brutes obey out of instinct.

[138] Cicero, *On Moral Obligation*, 72. See pp. 146-7. Also, Mary Mothersill, "Fittingness," in *The Encyclopedia of Ethics*, ed. Lawrence C. Becker, (Chicago and London: St. James Press, 1992), 378-80.

Cicero.[140] Decorum and fittingness help determine what is appropriate both on a general level and for specific situations and actions.

Cicero argues the properties of "decorum" are such that it cannot be separated from moral goodness, "for what is fitting is morally good, and what is morally good is fitting."[141] For "whatever there is in any action that is fitting, is apparent in that it has true goodness as its prerequisite."[142] Cicero contrasts this notion of fitting with things that are not fitting. A just action is fitting. Injustice is unfitting and disgraceful. Whatever is done in the spirit of manly courage is seen as worthy of a man and fitting, while the opposite is unworthy and unfitting.[143] "Decorum" is relevant to every good action, and its relevance is such that it should be obvious rather than requiring any abstruse processes of reason for its discovery.[144]

Cicero does not seem to elaborate on how one recognises the obvious relevance. This knowledge might come from intuition, common sense, or be self-evident. There are likely to be discrepancies between the conclusions drawn as different intuitions and senses arise. While Cicero accurately stresses the role of fittingness or "decorum" in moral goodness, he is unclear how to decipher its

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[139] Ibid., 72.

[140] Ibid., 83. Yet, there may be different views of what constitutes beauty. For example, some people may consider tall, dark and lanky men to be beautiful, while others view blond, tanned, muscle-bound men as beautiful. Agreement on 'apparent' natural beauty may not be as obvious as Cicero seems to imply.

[141] Ibid., 72. Cf. Finnis who connects fittingness, or *convenientia*, to human good and well-being. Finnis, *Natural Law and Natural Rights*, 46. Finnis notes that Hugo Grotius describes what is fitting to human nature is acting to follow "well-ordered" judgment, i.e. rational nature (43-4). See for instance, Hugo Grotius, *De Jure Belli ac Pacis*, trans. W. S. M. Knight, (London: Sweet and Macwell, 1922).

[142] Ibid., 72. Cicero is not clear in his meaning of prerequisite here. He does state that what is fitting is "apparent" in his present section on moral conduct, which is honourable conduct, and the three previous headings of courage, justice, and truth (35-6).

In determining what is fitting, it may be useful to ask 'Fitting with what?' The answer could include what fits with what you are, what you should be, what someone else expects of you, what your role is, or what all persons would do. Considering what all humans would do involves universalisability, and fittingness might be one test for it.

[143] Ibid., 72. Cicero's further examples of what is fitting include the use of reason and moderate speech, due consideration before action, and perception of and regard for what is true. Things that are not fitting include mistakes of fact, judgment and action.

relevance to good actions. What needs to be considered is the crucial role that fittingness plays in morality as a whole. Fittingness is linked to the complete coherence of a view, justification or theory.[145] It helps guide our choice of decisions and actions in determining what fits or does not fit, what is appropriate or inappropriate to a given context. Our moral framework must be coherent and our actions and decisions consistent with that framework as a whole.

For Cicero, one of our primary obligations is to pursue harmony with nature and the observance of its principles. If we take nature as our guide we will never go wrong, but will pursue what is by nature wise and true, what is in harmony with the principles of human society, vigorous and brave.[146] To achieve "decorum" each man should stick to what is natural for his own character, provided it is not harmful, should follow the dictates of his own nature as far as is consistent with the universal nature of man, and always act in a way which does not conflict with this universal.[147]

There is a shift in Cicero's requirements from our own nature to the universal nature of humankind. The nature of persons must be understood not only in individual terms, but includes their universal nature as humans. Even if we could gain an understanding of our own nature, acting to avoid conflict with it relies heavily on a level of consistency of personhood, and an understanding of what the nature of personhood is, which is not always how things function in reality. There are different and conflicting levels of human nature. The universal good and universal bad, universal good and particular bad, universal bad and particular good, and particular good and particular bad nature of humans can conflict. Human nature itself contains

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[144] Ibid., 72. It is interesting to note that Cicero states what is right and proper can be conceived at the very root of all virtue, but the distinction between "decorum" and virtue is theoretical not empirical. He claims "decorum" is inextricably linked to virtue, so as to be only conceptually distinguishable.
[145] See p. 212. Rawls addresses fittingness in regard to justification. Fittingness also may be linked to the coherence theory of truth.
[146] Cicero, *On Moral Obligation*, 74.

both good and bad elements, those we want to encourage versus discourage. These can be paralleled to descriptions of the virtues and vices in human nature. Nevertheless, an appeal to nature, either specific or universal, as our moral guide is problematic in that it needs to be grounded in both the individual and humanity as a whole.

More general critiques of natural law include a confusion between 'law' as a formulation of regularities in nature and 'law' as norms and rules to which voluntary behaviour ought to conform. A crucial difficulty with this theory is how we choose those aspects of natural behaviour or laws of nature which can and should legitimately serve as guides to moral behaviour. As it may be difficult to find guides to moral behaviour in nature, it also will be difficult to assess the fittingness or unfittingness of our actions. An obvious example is in the realm of contraception. Roman Catholics support the use of natural contraceptives, i.e. the so-called 'safe period'. Nature is so contracted that women are fertile at certain times and infertile at other times. Does this description of nature and natural law give any specific warrant to the use or refrain from using other contraceptive methods? What fits with natural processes? We cannot pretend to extract a uniform message from nature, or even one universal definition of nature. So, it is very difficult to regard the maxim 'follow nature' as a substantive guide to conduct.[148]

An illustration of the importance of the concept of "decorum", or fittingness, can be found not only in philosophical works, but also in biblical texts. The idea of fittingness is raised by the apostle Paul in 1 Corinthians 14:40, where he is addressing

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[147] Ibid., 78.

[148] These difficulties are damaging to natural law theory because the 'nature' in terms of which the norms of justice are defined is not always internally consistent. See Buckle, "Natural Law," 161-73. Wollheim, "Natural Law," 450-3. Furthermore, proponents of natural law can fall prey to the naturalistic fallacy. See pp. 72-3. Pidgen, "Naturalism," 421-2. Hudson, *The Is-Ought Question.* Moore, *Principia Ethica.*

the issue of order in worship. This verse has been translated "everything should be done in a fitting and orderly way."[149] The Greek word for fitting, ευσχημονως, or *euschemonos*, argues for propriety in the assembly.[150] As an adverb this word has been translated "decently"[151] and "well-formed",[152] and as a noun as "seemliness".[153] Regarding "seemliness", Robertson and Plummer interpret "fitting" to mean ecclesiastical decorum.[154]

Gerhard Kittel interprets the root word, ευσχημ, or *euschemon* to mean, "honest", "orderly", and "becoming".[155] He states it also can mean "noble", "honourable", "excellent", or "prominent". Kittel notes the Greek translation of "fitting" refers to "honest conduct", or being "suitably clad".[156] Kittel's translation of "fitting" as honourable relates it to morality, while the notions of being orderly and suitable tie it to decorum and appropriateness.

There are three important points to note in relation to this Corinthian passage. The first is that there are a variety of translations of the original Greek word, and no firm consensus. Secondly, despite this fact all the translations carry some notion of order, decency, and propriety with them. The concern seems to be that the

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[149] Gordon D. Fee, *The New International Commentary on the New Testament: The First Epistle to the Corinthians*, (Grand Rapids: Eerdmans Publishing, 1987), 713. Edward W. Goodrich and John R. Kohlenberger, III, eds., *NIV Exhaustive Concordance*, (Sevenoaks: Hodder and Stoughton, 1990), 403.
[150] Fee, *The New International Commentary on the New Testament*, 713.
[151] H. L. Goudge, *Westminster Commentaries: The First Epistle to the Corinthians*, (London: Methuen, 1903), 131. David Prior, *The Message of 1 Corinthians: life in the local church*, (Leicester: Intervarsity Press, 1985), 252. *The Interpreter's Bible*, (New York and Nashville: Abingdon Press, 1953), 214. Matthew Henry, *An Exposition of the Old and New Testament*, vol. 3, (London: Joseph Ogle Robinson, 1828), 1060.
[152] D. Guthrie, J. A. Motyer, A. M. Stibbs, and D. J. Wiseman, eds., *The New Bible Commentary*, (Leicester: Intervarsity Press, 1970), 1069.
[153] Rt. Rev. Archibald Robertson and Rev. Alfred Plummer, *The International Critical Commentary: A Critical and Exegetical Commentary on the First Epistle of St. Paul to the Corinthians*, vol. 35, (Edinburgh: T & T Clark, 1911), 328.
[154] Ibid., 328. They state that beauty and harmony prevail in God's universe where each part discharges its proper function without slack or encroachment, and this beauty and harmony ought to prevail in the worship of God.
[155] Gerhard Kittel, ed., *The Theological Dictionary of the New Testament*, trans. Geoffrey W. Bromiley, (Grand Rapids: Eerdmans Publishing, 1964), 770.
[156] Ibid., 771. Kittel claims the last translation is too restrictive.

Corinthians should not let their assembly fall into disorder or allow *inappropriate* and *unfitting* worship to take place. Instead, they ought to be seeking to act in ways which fit with orderly, honest, and decorous worship, namely worship which is appropriate for human beings to offer and conduct and appropriate to God. Thirdly, the assessment of what is fitting takes place within the context of a moral argument for Paul, so it also is offered as a test for what is good or bad, right or wrong.

In applying an understanding of orderly and fitting behaviour we must recognise the opposite sometimes occurs and people behave in unfitting ways, both intentionally and unintentionally. The latter might be because people misunderstand a situation, action, or text and, therefore, gain an inaccurate or ill-fitting perspective of it. As with every text, we must be aware of the proper context in which and to which it was written, to gain a balanced reading and understanding. There are at least two levels of potential disagreement about a given text, namely about its literal translation and its application. We can examine the following verses as an example of these levels and in relation to fittingness.

> As in all the congregations of the saints, women should remain silent in the churches. They are not allowed to speak, but must be in submission as the Law says. If they want to inquire about something, they should ask their own husbands at home; for it is disgraceful (not fitting) for a woman to speak in the church.[157]

In these verses, it is not so much the translation of fittingness which is highly debatable, but the application. With these verses, what was fitting when they were written might not be fitting now. Keeping women separate and silent in the church may have been fitting in that context, setting, culture for very particular reasons, but it would not necessarily be fitting in our present context. These verses have been misused to curtail women from speaking or teaching in churches in modern times.

This was not Paul's intention, as he was addressing a problem in the Corinthian church in particular, not presenting a general rule.[158] To use these verses to subjugate and silence women in the church ignores the proper context in which the passage was written. It is not *fitting* with regard to Paul's original intentions, or to an appropriate, present day application of the text. Therefore, it is an inappropriate and unfitting reading. To achieve an appropriate interpretation of this, or any, text we must examine the past and present cultures to understand more fully what was and is considered fitting.

Recognition of variation in fittingness and appropriateness is important within the realm of customs and manners. Here the notion of "decorum" may be used again, as it deals with what fits within a social context. To determine what is fitting, we must be aware of and sensitive to customs and manners which may have cultural, societal, and communal bases.[159] For example, to burp aloud after a meal may be considered highly offensive and rude in one culture while being fully accepted and considered a great compliment in another. So, there may be some difficulty in discerning what fittingness means even in a given context, particularly for those unfamiliar with that context. Part of this difficulty is the fact that we live in a pluralist society.[160] This society is multi-cultural, and even within any given sub-culture there are variations in what constitutes acceptable and appropriate customs and manners, e.g. wearing the veil in Muslim countries. Different people will have different

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[157] 1 Corinthians 14:34-5. *New International Version of the Bible*, (Grand Rapids: Zondervan Bible Publishers, 1978), 1054.
[158] See Guthrie, Motyer, Stibbs, and Wiseman, *The New Bible Commentary*, 1070. James Hastings, ed., *The Speaker's Bible*, vol. 3, (Aberdeen: Turnball and Spears, 1927), 110-1. *The Interpreter's Bible*, 212-3. It is interesting to note that as with 1 Corinthians 14:40, Paul was concerned with orderly worship and is possibly protesting against the disturbance of services by feminine chatter or the uncontrolled use of praying in tongues. Yet, he does not condemn women to complete silence in the church, as elsewhere he mentions women who are able to prophesy, which was a spiritual gift exercised in public. See 1 Corinthians 11:5 and Acts 21:9.
[159] See pp. 234-7.
[160] See pp. 183-4.

perceptions of what fittingness entails. As other people's customs shape their expectations of and interaction with us, we need cultural and contextual sensitivity to ascertain what is fitting in relation to them.[161] In assessing fittingness within a variety of cultures, there may be common bases for assessing appropriateness, but the variation itself may highlight the need for minimum standards to ensure protection and consistency in treatment of people in society.[162]

The notion of appropriateness involves what is fitting and unfitting. The shortcomings of a fittingness based in natural law point toward the need for more than what is 'natural' as a guide to moral fittingness. This can include either or both an appeal to universal natural and moral law or universal laws which people establish and apply to all.[163] There also are difficulties in determining fittingness on a literary level, particularly in relation to the interpretation and application of a text. Finally, the role that culture and customs play in determining what is fitting and appropriate was examined. Because of the variety of cultures that exist and the difficulties caused by such a variety, appropriateness is needed to help us discern what is fitting to a situation and context.

Conclusion

In developing a middle way model, the thesis has drawn elements from both the ethics of care and the ethics of justice. A middle way emphasises the importance of *context* in decision-making as it provides a fuller understanding of the situation and persons involved. *Persons and their relationships* play a crucial role in any decision and their rationality, intrinsic worth and value, holistic interaction and existence in community were emphasised. A middle way incorporates *responsibilities*, which

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[161] See pp. 203-6.

arise in relation to a community or society, involve minimum standards, which include protecting the vulnerable, restraining harm and meeting basic needs, and maximum standards, which include beneficence and flourishing. *Justice* contributes to the minimum standard, particularly with respect to equality, fairness, desert, entitlement and equity. *Appropriateness* was drawn out and examined in relation to fittingness, decorum, interpretation, application and contexts.

These five elements are crucial in proposing an amalgam of the ethics of care and the ethics of justice as they draw themes from both approaches to decision-making, but provide a more balanced and complete approach than either care or justice alone. Together they form a grid or framework by which to conduct the process of moral decision-making and to test the adequacy of both the decision and process. This model now has been expounded more fully in theory, but needs to be applied to analyse how it will work in practice.

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[162] See pp. 223-5, 230-7.
[163] For example the United Nations Declaration of Human Rights.

Chapter Six: The Child B Case

Introduction: Application of a Middle Way Model

It has been argued that a middle way is sufficient in theory, but it also must be tested in practice. In applying this model, the particular 'Child B' case was chosen because it received a high degree of publicity, was much debated and raises issues regarding conflicting decisions, needs, relationships, responsibilities, justifications and views of appropriateness. Before applying a middle way model, it is necessary to examine how both the ethics of care and the ethics of justice would approach this case.

The ethics of care would primarily focus on the specific context, people, relationships and responsibilities. It is concerned with the emotive nature of the case, particularly as it involved a child patient. Given these factors, the ethics of care would tend to support the parents' view. Yet, this ethic lacks a view of justice, the universalisability of decisions and reality of distributing limited resources. It has too narrow a view of appropriateness, based on certain specifics of the case.

Alternatively, the ethics of justice would focus primarily on fairness, equality, equity, desert, entitlement, duties and responsibilities, the universalisability of decisions and allocation of resources. The ethics of justice would tend to support the health authority's view of the case. Yet, this ethic incorporates a stringent view of desert and entitlement based on exhibiting capacities. It holds too narrow a view of the importance of the effect that persons, relationships and context do have on any case, and too legalistic a definition of responsibilities and appropriateness.

Both the ethics of justice and care are insufficient in themselves and in application to this, or any, case. A more balanced framework is needed. A middle

way model provides such an approach, recognising the importance of the specific context, persons and relationships, responsibilities, principles of justice and appropriateness of the decisions made.

Description of the Case

Child B[1] had been diagnosed and treated for acute lymphoblastic leukaemia at age five, from which she recovered. She later developed acute myeloid leukaemia, and in January 1995, aged 10, was given about eight weeks to live. National Health Service (NHS) consultants at Addenbrookes and the Royal Marsden Hospitals agreed that the possible treatment was neither very likely to succeed nor in her best interests.[2] This proposed treatment would be administered in two stages, the first being further chemotherapy costing £15,000, and the next being a second bone marrow transplant, costing £60,000, administered if remission was achieved. Both had a similarly estimated 10-20% chance of success.[3] Clinicians based their judgment of the inappropriateness of the treatment on its *very slight* probability of success and the fact that it would cause considerable pain and distress.[4]

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[1] In October 1995 Child B's father applied to the court to lift the identification ban on her name so he could publicise her case and raise funds for further treatment. She was revealed to be Jaymee Bowen. See Richard Bradbury, et al., "Media Coverage of the Child B Case," British Medical Journal, 312 (1996) : 1587.

[2] Ibid., 1587. See also Caroline Richmond, "Is the Issue the Price of a Child's Life, or the Futility of Heroic Measures?," Canadian Medical Association Journal 152 (1995) : 2035.

[3] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129.

[4] Bill New, "The Rationing Agenda in the NHS," British Medical Journal 312 (1996) : 1596. My emphases. Interestingly, there is some discrepancy in the reported chances of further chemotherapy and a second bone marrow transplant being successful. New cites a 2.5% chance of a second bone marrow transplant being successful while the Law Report referred to a 10-20% chance of success for both parts of the treatment. Furthermore, Richmond claims that Dr Peter Gravett, the private doctor who eventually treated Jaymee, said that treatment, both the chemotherapy and the second bone marrow transplant both had a 10% chance of success. In other words, Richmond points out that Jaymee's treatment may have had only a 1% chance of success, if the variables were independent. See Richmond, "Is the Issue the Price of a Child's Life, or the Futility of Heroic Measures?," 2035.

Jaymee's father disagreed with the decision and sought second opinions in the United States and Great Britain.[5] Some of the advice he received from abroad was that the transplant did have a significant chance of success, and so he pressed for further treatment, this time from Hammersmith Hospital in London. Based on clinicians' advice, the Cambridge Health Authority refused to pay for the extra-contractual referral.[6] There was some disagreement among clinicians in Britain, as Professor Goldman of Hammersmith Hospital wrote to Dr Pinkerton of the Royal Marsden Hospital that he thought it would be "reasonable to give [B] further chemotherapy". He did acknowledge this treatment might not succeed, and even if it did a second bone marrow transplant was a "high risk strategy", though not a "totally impossible task." He further stated the second transplant could be carried out at the Hammersmith, in certain circumstances, but because they did not have nor were likely to have any available beds in the next two to three weeks he had no option but to suggest that B's father seek treatment in the private sector, and recommended Dr Peter Gravett.[7] In February 1995, Dr Gravett indicated he was willing to treat Jaymee, if she and her family agreed that the proposed treatment had a "worthwhile chance of success",[8] but Cambridge Health Authority still refused to fund the treatment.[9] The case attracted much media attention and an anonymous private donor paid for Jaymee's private treatment. The intensive chemotherapy met with limited success, so Dr Gravett decided against a second bone marrow transplant.[10] Instead he used an experimental treatment called donor lymphocyte infusion. Only 20 people were said to have received the treatment at that time, and Jaymee may have been the

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[5] Bradbury, et al., "Media Coverage of the Child B Case," 1587.
[6] New, "The Rationing Agenda in the NHS," 1596.
[7] R v Cambridge Health Authority, ex p B [1995] 2 All ER 132.
[8] Ibid., 133.
[9] Bradbury, et al., "Media Coverage of the Child B Case," 1587.
[10] Ibid., 1587.

only child to have received it. The treatment was initially effective and the cancer went into remission for over one year, but it eventually recurred and Jaymee died in May 1996.[11]

Legal Case

The legal case arose in March 1995 when Jaymee's father took Cambridge and Huntingdon Health Authority to the High Court for refusing to fund further chemotherapy and a second bone marrow transplant.[12] The health authority argued that in reaching its decision not to fund this treatment for Child B it had considered these factors: the appropriateness of the treatment; the guidance given by the Department of Health regarding non-proven or experimental treatment and the fact that the proposed treatment was neither standard nor formally evaluated; whether the expenditure was an effective use of resources given the small prospect of success, acknowledging the authority's responsibility to ensure it had sufficient funds for others patients' treatments which were likely to be effective.[13] The High Court ruled that the health authority should reconsider its decision,[14] but did not require it to fund the treatment. This judgment was based on the alleged lack of regard the health authority had shown for the father's views, that it had wrongly refused to allocate funds because it regarded a second bone marrow transplant as experimental, when it referred to the use of resources it had not explained adequately the funding priorities

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[11] Ibid., 1587. New, "The Rationing Agenda in the NHS," 1596.
[12] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129. Bradbury, et al., "Media Coverage of the Child B Case," 1587. New, "The Rationing Agenda in the NHS," 1596.
[13] Ibid., 129.
[14] Ibid., 129-30. Bradbury, et al., "Media Coverage of the Child B Case," 1587. New, "The Rationing Agenda in the NHS,"1596.

that led to its decision, and it had wrongly considered the issue to be an expenditure of £75,000, when the initial expenditure was only £15,000.[15]

Later that day, on March 10th, when the case went to the Appeal Court, the health authority's decision, and right to make a decision in such a manner, was upheld on the basis that it had been made rationally and fairly.[16] The Appeal Court argued it

> ...could only consider the lawfulness of the decision at issue and it was not for the court to decide between conflicting medical opinions or to decide how a health authority's limited budget should be allocated between opposing claims on its resources.[17]

This court was clear on certain facts, namely that the High Court judge had been wrong to criticise the manner in which the health authority had reached its decision, that the authority's decision was not flawed, it had proceeded correctly, and the court was not in a position to decide on the correctness of "difficult and agonising judgments" which it had to make regarding a limited budget being used "to the maximum advantage of the maximum number of patients." So, the appeal was allowed and the High Court judge's order rescinded.[18]

Implications of Legal Rulings

One difficulty surrounding this case was the disparate accounts of the health authority's decision-making process. It wrote to Jaymee's parents claiming the decisions would be taken on the grounds of her best interests, not on financial grounds, but it later cited in court whether the treatment was an "effective use of resources" as one of four main considerations.[19] So, contrary, and in addition, to what

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[15] Ibid., 130.
[16] Bradbury, et al., "Media Coverage of the Child B Case," 1587. New, "The Rationing Agenda in the NHS," 1596.
[17] R v Cambridge Health Authority, ex p B [1995] 2 All ER 130.
[18] Ibid., 130.
[19] Ibid., 129.

the health authority indicated initially in court it was Jaymee's best interests weighed against the interests of others and financial grounds which were considered.[20]

Further disagreement came at the appeal stage, as the Appeal Court refuted much of the High Court's ruling. The High Court also had called for further explanations in deliberations and financial calculations, while the Appeal Court claimed this was an unreasonable expectation.[21] While the former drew attention to the health authority's lack of consideration for the father's opinion, in listing the opinions it had sought and the weight attached to them, the latter rejected this argument, claiming the health authority was "vividly aware" of the parent's view. The Appeal Court stated that a high value was placed on human life in a society like ours, but if the health authority ruled that £75,000 was not an effective use of resources, then this was an intelligible though painful line of reasoning. It was not up to the court to say whether the judgment was valid, that depended on the way the authority balanced opinions. In disagreeing with the High Court, the Appeal Court ruled that the authority was *not* under a legal obligation to show how this judgment had been reached. This was a crucial decision implying that any health authority remains within the law if it can show it is broadly conscious of different points of view, but it is not under any obligation to show explicitly how it decides between them.[22]

Examining the details of this case emphasises differences in opinion about Jaymee's treatment between her parents, the health authority and both the High and Appeal Courts. These conflicting views highlight the need for further critical reflection and analysis on this case and the issues it raises. This will be done through

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[20] David Price, "Lessons for Health Care Rationing from the Case of Child B," British Medical Journal, 312 (1996) : 168.
[21] R v Cambridge Health Authority, ex p B [1995] 2 All ER 137-8.

applying a middle way model and its five elements of context, persons in relationship, responsibilities, justice and appropriateness to this case.

Context

In seeking to understand this case one important aspect is the background, which includes medical and cultural history. Regarding Jaymee's medical history it is important to note she had been treated for leukaemia previously.[23] Although the transplant procedure itself was fairly standard, it was the fact Jaymee would be receiving a *second* bone marrow transplant which was significant and debatable.[24] Jaymee's medical background appropriately or inappropriately influenced decisions about a second course of treatment, its likely success and the resources used.

Background also includes the cultural climate within which the case arose and decisions were made. In modern Western culture there is wide-spread knowledge about and use of medical technology. So, people have a high level of expectation that medical technology can offer some benefit for almost every patient. The standard of technology available affected the expectations of Jaymee and her parents regarding what the health authority, doctors and nurses could and should have done for her. More specific to British culture was the expectation that the government and NHS should pay for all Jaymee's health care treatment, because of the provision of a socialised health care system. Yet, this expectation conflicted with the reality of having to allocate resources within a market system.

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[22] Price, "Lessons for Health Care Rationing from the Case of Child B," 168. R v Cambridge Health Authority, ex p B [1995] 2 All ER 136-8.
[23] Bradbury, et al., "Media Coverage of the Child B Case," 1587.
[24] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129.

A further cultural expectation was that because the technology was available it should be used on Jaymee. In this case, despite the slight chance of success from further treatment, Jaymee's parents strove to ensure she would receive it.[25] In part, they expected the doctors and nurses, by aid of technology, to try to preserve Jaymee's life at all costs. In Western culture, the fact and knowledge that an advanced technology has been developed often leads to the expectation that it will and ought to be used. An underlying view is that death can be resisted and controlled and life can and should be infinitely sustained and preserved at all costs. This cultural expectation is not necessarily possible or appropriate.

We might ask whether having a particular technology means we ought to use it at all or all of the time. In this case, part of the debate was that doctors and nurses knew an experimental technology was available which had a very limited chance of helping Jaymee. In light of its poor success rate and its experimental nature, as well as the pain and distress which the treatment would cause, most NHS doctors involved decided it should not be used on her.[26] This general consensus affirms that the existence of a technology does not necessarily mean it must, or should, be used. It might not be useful in some instances and may raise ethical and moral questions with which society as a whole or the medical and nursing professions do not want to cope or attempt to resolve.

In a context people interact, form relationships and make decisions. In this case the settings were primarily NHS and private hospitals and the courts. Within the public health care setting clinicians decided treatment was not in Jaymee's best

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[25] Ibid., 129. Bradbury, et al., "Media Coverage of the Child B Case," 1587. New, "The Rationing Agenda in the NHS," 1596.
[26] Ibid., 129-30. At least one doctor, Peter Gravett, was willing to try the treatment (133).

interests,[27] while, not surprisingly, the private sector was more willing to treat,[28] provided someone funded it. The health authority's justifications for not treating Jaymee seemed to shift focus when presented in the High and Appeal Courts. When the case arose originally, the health authority refused to fund further treatment because it was not in Jaymee's best interests. Yet, when presented in court, an additional justification was that the treatment was not an effective use of resources.[29]

Context also includes the underlying ideologies and frameworks. People and institutions have different attitudes toward values such as the sanctity of life, intrinsic worth of individuals, fairness, and equality. As part of the content of an ideology, individuals or institutions place value on specific areas like rationality, efficiency, compassion, or the meeting of needs.

In court, the health authority appealed to the financial implications of treating Jaymee against the interests of other patients.[30] Ideologies can have moral bases. So, the notion of best interests may be rooted in the moral view that humans have intrinsic worth and dignity, which places value on individuals in and of themselves,[31] or respect for persons, which can be based on individuals' capacities or contributions in a given context.[32] Yet, there are difficulties in assessing best interests, particularly regarding who decides what they are, as in this case the views of the doctors, nurses, health authority, the patient and family conflicted. Also, the timing of the decision is vital as people's assessment of what is in their own or another's best interest can alter

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[27] Bradbury, et al., "Media Coverage of the Child B Case," 1587. New, "The Rationing Agenda in the NHS," 1596.
[28] Ibid., 1587. See also R v Cambridge Health Authority, ex p B [1995] 2 All ER 129.
[29] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129. For a broader view of the health authority's stance, see Ron Zimmern, "Challenging Choices: the second annual report of the director of health policy and public health for Cambridge and Huntingdon Health Commission," (Cambridge: Cambridge and Huntingdon Health Commission, 1995). This health authority highlights six core values for facing difficult decisions. They are equity, effectiveness, efficiency, appropriateness, accessibility and responsiveness.
[30] Ibid., 129.
[31] See pp. 213-15.

over time. This change can occur due to personal reasons, like age, state of mental and physical health, number of dependants, or advances in technology. There are conflicts between different ideologies and views of best interests, which can be based on people's intrinsic worth or respect for persons.

In contrast to either of these two moral bases, the Appeal Court focused on a utilitarian base which it saw the health authority utilising to apply a limited budget "to the maximum advantage of the maximum number of patients."[33] Although, in theory, utilitarianism provides one clear answer or goal for decisions, maximising the greatest happiness and good for the greatest number, in practice its answers are unclear. In arguing *for* Jaymee's aggressive treatment, a utilitarian could claim that giving pleasure to Jaymee contributes to the greater good as it brings her happiness, that the quantity of her life could be increased, and all children should be treated, as this benefits society as a whole. In analysing the quality of Jaymee's life, a utilitarian could argue for *or* against further treatment, as it might improve her condition, but adds pain and distress. A utilitarian would argue *against* further treatment if assessing the usefulness of the resources used to treat Jaymee over other patients. One danger is utilitarianism could require that the relatively few expensive patients, like Jaymee or those in intensive care units, should not be treated aggressively because they consume too many resources. Not only could expensive patients be refused such treatment, but it could be in the interest of the greater good and the majority in society if they are left to die or even killed. Then the resources they would have consumed could be used to bring about greater happiness for a greater number of people, even after the pain of the patient and the grief and loss of the family have been recognised. Utilitarianism is unhelpful as it provides conflicting assessments of decision-making in practice.

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[32] See pp. 213-14.

An alternative to a utilitarian approach is that of treating Jaymee as an end in herself. Viewing Jaymee as an end in herself and not a means to an end would have meant deciding whether or not to treat her primarily on the basis of *her* best interests. This view would not support her best interests being weighed against the interests of other patients, or refusing to treat her as a means of providing treatment for other patients. This view acknowledges the intrinsic worth, value and dignity of each individual person, but still leaves the difficult question of defining best interests.[34]

Persons have a key role within a context, as they make and are affected by decisions.[35] The people involved ranged from the patient, Jaymee Bowen, to her parents, nurses and doctors in the NHS and private sector, as well as other patients and the wider community. The NHS doctors' decision not to treat Jaymee aggressively, and the health authority's decision not to fund her extra-contractual referral[36] affected all the people involved in the case, whether directly or indirectly.

As the patient, Jaymee was the central figure, because it was her illness around which the case formed and her medical treatment which was debated. Her father was a key protagonist, as he was the primary person who pressed the health authority to fund the treatment, took the case to court, and helped raise money for her private treatment.[37] The consultants were notable because of the variation in their clinical opinions, primarily between those in the NHS and private sector,[38] and their responsibility to provide care and treatment.

The participants in this case also can be analysed regarding their relationships with others, the roles they played, and the way both affected the decisions. Jaymee

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[33] R v Cambridge Health Authority, ex p B [1995] 2 All ER 130.
[34] See pp. 213-15.
[35] The role of persons in this case will be analysed in more depth. See pp. 260-8.
[36] New, "The Rationing Agenda in the NHS," 1596. Bradbury, et al., "Media Coverage of the Child B Case," 1587.
[37] Bradbury, et al., "Media Coverage of the Child B Case," 1587.

was a daughter, patient, child, human being, and member of a community. Her father and mother were parents, human beings, and members of a community. The doctors and nurses were professionals, human beings, and members of a community. The health authority had a relationship with Jaymee, her parents, clinicians, other patients, the courts, government, and wider community.

These lists may seem self-evident, but one key element in understanding the context of this case is noting how different levels of relationship and roles interacted, especially in conflict. On one level, the doctors and nurses dealing with Jaymee experienced a tension between relating to her as one individual patient, and wanting to pursue her best interests, while at the same time being aware that giving her inappropriate or appropriate treatment would take away resources from their other patients. On another level, the Cambridge Health Authority's decision not to fund aggressive treatment for Jaymee[39] conflicted with Jaymee and her parents' views of her best interests.[40]

This tension can be viewed as that between individuals in relationship versus the organisations or institutions relating to individuals. Her parents disagreed so strongly with organisational opinion that they took the health authority to court in an attempt to force it to fund Jaymee's further treatment.[41] The legal institutions themselves were divided. The High Court decision went against the health authority and required it to reconsider its decision.[42] Thus, it supported the parents' view of Jaymee's best interests. This ruling was overturned by the Appeal Court supporting

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[38] Ibid., 1587. R v Cambridge Health Authority, ex p B [1995] 2 All ER 131-5.
[39] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129, 131-2.
[40] Bradbury, et al., "Media Coverage of the Child B Case," 1587. New, "The Rationing Agenda in the NHS," 1596. One NHS doctor was willing to treat Jaymee aggressively.
[41] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129. Price, "Lessons for Health Care Rationing from the Case of Child B," 167. Bradbury, et al., "Media Coverage of the Child B Case," 1587. New, "The Rationing Agenda in the NHS," 1596.
[42] Ibid., 129-30.

the health authority's view of Jaymee's best interests.[43] So there was disparity between the courts' judgments of Jaymee's best interests.

In justifying its decision to Jaymee's parents the health authority initially claimed to rely on clinicians' advice. Dr Zimmern of Cambridge Health Authority wrote to Jaymee's parents

> Should there be any misunderstanding I should state quite clearly that any decision taken by the [authority] will be made taking all clinical and other relevant matters into consideration and *not on financial grounds*.[44]

Later, in court, the health authority referred to the use of resources in reaching its decision.[45] The Appeal Court upheld this consideration, stating difficult decisions must be made in allocating limited resources to the "maximum advantage of the maximum number of patients".[46] This second line of justification highlights the responsibility of the health authority for other patients. The authority claimed it had considered

> ...whether the expenditure involved was *an effective use of resources* given the small prospect of success and having regard to the authority's responsibility to ensure that it had sufficient funds for *the treatment of other patients* which was likely to be effective.[47]

Because resources are limited, this and any other health authority, its nurses and doctors, constantly have to weigh up the needs of some patients against others.

In applying a middle way model, the effect of background, particularly Jaymee's medical and cultural background, on expectations and decisions was analysed. A change from professional to legal setting exposed a shift in the health authority's justifications for its decision from Jaymee's best interests alone to allocation considerations for treating other patients. The underlying ideology is

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[43] Ibid., 136-8.
[44] Ibid., 133. Emphasis added.
[45] Ibid., 129.
[46] Ibid., 137.

utilitarianism which fails to provide a consistent practical means of decision-making. The alternatives of treating Jaymee as an end in herself, based on intrinsic worth and respect for persons, which considers best interests, were investigated.[48] The persons and their conflicting roles were examined, while recognising the relationship of health authorities, doctors and nurses to the wider community of patients and the reality of limited resources.

Persons in Relationship

Rationality was significant in this case as NHS doctors and the health authority were required to justify their decisions to the courts. There was disagreement regarding the appropriateness of the justification provided. The High Court did not accept the authority's rationale as appropriate or sufficient.[49] The Appeal Court overturned this ruling.[50] Although the Appeal Court decision went against the family's wishes, the judge recognised the parental pressure placed on the health authority as "perfectly legitimate".[51] This court upheld the justifications of the health authority as appropriate,[52] presumably on the basis that they were rational and understandable, though not easy to accept. Judgment about the health authority's justification as sufficient, adequate or appropriate varied.

The doctors and nurses, health authority, and even Jaymee's parents had to provide reasons and justifications for their decisions and actions. The requirement of justification for our choices and actions relates to accountability. Within any community and set of relationships, whether personal or professional, we are

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[47] Ibid., 129.
[48] It is not surprising that a middle way model is critical of utilitarianism as both the ethics of care and the ethics of justice oppose it too.
[49] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129-30.
[50] Ibid., 130, 136-8.
[51] Ibid., 136.

accountable for past and present choices. This accountability entails providing understandable rationale for our actions.[53] The role of the law in community is to judge between competing perspectives of justification and for what and to whom we are accountable.

Rationality is one part of persons and relationships, but reasons for decisions and actions sometimes conflict. As we have seen in this case, there are conflicts between people, their wants, needs and justifications. These arise because of different priorities, values and assessments of best interests. Individuals themselves experience conflicting desires, like those between what they want versus what they ought to do. Relationships are marked to a lesser or greater extent by conflict. Therefore, it is crucial to recognise the fact, nature and content of conflict, as well as means of resolving it.

In this case, part of the conflict arose because the doctor-patient relationship contained a variety of elements including need, demand, clinical judgment, management decisions, and financial limitations. When assessing Jaymee's situation, NHS doctors had to consider Jaymee as their first priority, but the other factors could not be ignored. In particular, it seems the financial constraints operating within the health authority, and the NHS generally, played a significant role.[54] There was a conflict between the health authority's ability to provide care for Jaymee and its other patients. In assessing the health authority's relationships to all its patients, we may ask what kind of role these constraints did and should play. In the best of all possible worlds financial constraints would not be an issue because there would be sufficient funds for all treatments. Yet, if financial resources were available for every treatment doctors and nurses might try to preserve human life at all costs and times. People

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[52] Ibid., 136-8.

might receive officious treatment causing greater harm to their bodies and minds, distress to their loved ones, and diminish their integrity, than if they are allowed to die with dignity. Even in this seemingly ideal world, we recognise that *all* treatment would not necessarily be *appropriate* treatment.

In judging the appropriateness of the financial considerations in this case, Jaymee's parents appealed to the courts for clarification. The relationship which the law has to the health care arena and a community as a whole is important. It functions to set and maintain some minimum standards, primarily restraining harm to people. This minimum standard means restraining harm both for one and/or for many. In justifying its decision to the courts, the health authority considered the effectiveness of this use of resources and its responsibility to provide effective treatment for other patients which had a greater likelihood of success.[55]

The High Court supported the family's view of restraining harm to Jaymee, which included treating her aggressively. This court ruled the health authority should reconsider its decision not to treat.[56] In contrast, the Appeal Court over-turned this ruling and supported the health authority's decision.[57] The general desire to restrain harm to Jaymee was consistent from her parents, the health authority and the courts, while the decisions and applications of it conflicted with each other.

The impact of identifying and trying to universalise a particular approach to decision-making must be explored. If patients are viewed primarily in terms of the financial resources they consume, it would have been more cost-effective to let Jaymee die or even kill her, as this decision would have released resources to be used on others. This cost-effective view harbours a utilitarian framework which can

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[53] See pp. 222-3.
[54] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129-30, 137-8.
[55] Ibid., 129. Emphases added.
[56] Ibid., 129-30.

support resources being used to treat as many patients as possible. One danger with a utilitarian base for assessing and dealing with needs is it treats people as means and not ends in themselves, thus over-looking the intrinsic worth and value of some patients for the greater general happiness of others.[58]

Interestingly, in justifying its decision to Jaymee's parents, the health authority stressed her best interests, while in court the issue of effective use of resources became more prominent.[59] There was some discrepancy between the doctors' reasoning at the time of making the decision and the justifications offered by the health authority later in court. The Appeal Court seemed to allow and assume an utilitarian base for making decisions within a health authority.[60] If Jaymee's treatment was not funded by the health authority for this reason, then she was 'sacrificed' for the good of other patients. If the Appeal Court did uphold such a utilitarian base, then it was not fulfilling a minimum standard of restraining harm to her, but perhaps only to others.

An alternative to a utilitarian approach is treating Jaymee based on her intrinsic worth and value.[61] If Jaymee was being valued intrinsically, did this mean doctors and nurses were to do anything she or her parents wanted? Did it entail doing anything and everything to keep her alive? 'No' seems to be the answer to both of these questions. Valuing Jaymee as an individual, in part, meant treating her based on her wishes. Apparently she and her parents wanted the aggressive treatment, and they may have claimed providing it would be respecting her dignity. Alternatively, valuing her as an individual also could have meant not treating her based on wanting to help her maintain her dignity. Although maintaining Jaymee's dignity could have

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[57] Ibid., 136-8.
[58] See pp. 255-7.
[59] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129-30, 136-8.
[60] Ibid., 130, 137.

supported either view of treatment, it did *not* necessarily mean doing anything and everything she, or her parents, wanted to keep her alive.

In contrast to Jaymee and her parents, NHS doctors judged that a second course of treatment was not in Jaymee's best interests. Dr Broadbent stated

> I have considered very carefully whether a second allogeneic transplant operation would be in [B's] *best interests*. I have considered the prospects of success and the suffering which [B] would undergo as a result of such treatment. First [B] would have to undergo a course of intensive chemotherapy with the hope of achieving a complete remission. Such chemotherapy would in itself cause *considerable suffering*. Only if complete remission could be achieved could a second allogeneic transplant be considered. In fact a complete remission is unlikely to be achieved. Further, the prospects of a second transplant being successful are only in the region of 10 per cent. I took the view that *it would not be right to subject [B] to all this suffering and trauma* when the prospects for success were so slight.[62]

Part of Dr Broadbent's calculation of Jaymee's best interests considered her diminished quality of life due to additional "suffering and trauma".[63] This quality of life assessment could have been related to doctors' judgments that further aggressive treatment would diminish Jaymee's integrity, or wholeness, as a person due to the "considerable suffering" and further damage she would have to endure, without a sufficient guarantee or chance of a successful outcome in terms of life expectancy.[64] Such considerations imply not only the physical, but also mental and emotional, levels of suffering.[65]

NHS doctors believed offering Jaymee a course of palliative care would be preferable, and in her best interests. One clinician, Dr Pinkerton, stated

> This [course of palliative therapy] would enable her to enjoy several weeks or months of normal life prior to progression. A further course of intensive chemotherapy and a second transplant would mean several

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[61] See pp. 256-7.
[62] R v Cambridge Health Authority, ex p B [1995] 2 All ER 134. Emphases added. Dr Broadbent had been responsible for treating Jaymee since her illness was initially diagnosed.
[63] Ibid., 134.
[64] Ibid., 134.
[65] For further discussion of a holistic approach to Jaymee's treatment, see pp. 266-7.

> uncomfortable and distressing weeks or months in hospital which in all probability [B] would not survive.[66]

In recommending palliative care rather than aggressive treatment for Jaymee and by not adding to her pain and suffering, but trying to reduce them, the NHS doctors seemed to be trying to preserve her quality of life, best interests and integrity.

> Individuals have integrity and we all have an obligation not to harm, but to uphold it. This is part of what it means to treat people with dignity. We can speak, therefore, of someone's dignity, worth and value, by which we imply not to interfere with who and what a person is fundamentally, what a person wants, his/her own integrity, wishes, desires, well-being and wholeness, both as that person sees them and as the community would accept. A community context is necessary for the recognition of integrity and dignity, for without a community we would not necessarily be aware of others' integrity and dignity, or have a context within which to respect and uphold them.[67]

Respecting dignity in this case does not only relate to Jaymee or her parents, but also to the doctors and nurses. Individuals have different ideas about how best to respect and maintain their own or another's dignity. When these conflicts arise, we need to balance the dignity of one person with that of others. Jaymee and her family seem to have felt that respecting her dignity entailed giving her the more aggressive treatment. While acknowledging these wishes, NHS doctors and nurses had to try to maintain their dignity and integrity as persons too. To do this doctors and nurses could not be forced to treat Jaymee against their better judgment, however difficult the decision, as this would compromise their dignity and integrity both as persons and professionals. As professionals, being forced to give a treatment which doctors and

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[66] R v Cambridge Health Authority ex p B [1995] 2 All ER 134-5.
[67] See pp. 213-14, 214-23.

nurses thought was inappropriate would go against their clinical judgment and professional standards for treating patients, their conscientious views of Jaymee's best interest, and their commitment to provide care for her, particularly as they thought the treatment was likely to cause her more harm than palliative care alone. As persons, they might have believed the treatment to be inappropriate and morally wrong because of its unlikely chance of success, experimental nature and high risk of early mortality.[68] In deciding not to treat Jaymee aggressively, the doctors and nurses maintained their dignity and integrity.

As integrity involves wholeness, it is connected to a holistic view of persons, which includes their rational, emotional, physical, and spiritual dimensions.[69] In this case we know much about Jaymee's physical state, but less about her emotional, mental and spiritual states. She and her parents must have been under great emotional stress due to her illness, the conflict with health authority and court case. In pursuing further aggressive treatment for Jaymee, her parents' actions were understandable *if* they were fighting for her survival and trying to preserve her life at all costs. Their actions were not fully understandable in light of the additional pain, distress, and risks of treatment.[70]

In deciding not to treat, the NHS doctors weighed up the effects of the treatment on her quality of life and her life itself. Dr Pinkerton wrote

> This is a very sad case and I fully understand [the father's] endeavours to do everything possible for the sake of his daughter. However, I remain of the view that *it would not be in [B's] best interest* to subject her to *a distressing course of treatment* which is most unlikely to be successful and carries a high risk of early morbidity.[71]

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[68] R v Cambridge Health Authority ex p B [1995] 2 All ER 129, 134-5, 136-8.
[69] See pp. 215-17
[70] R v Cambridge Health Authority ex p B [1995] 2 All ER 134-5. There may be further debate about whether Jaymee's parents were placing greater value on life itself rather than the quality of her life. If they were, then they may not have given appropriate consideration to the quality of life Jaymee would endure to survive, if possible, and in that surviving. See pp. 278-81.
[71] Ibid., 135. My emphases.

Dr Broadbent conferred that the treatment was not in Jaymee's best interests for similar reasons.[72]

It is important to note the NHS doctors were not necessarily approaching Jaymee's case with only her physical dimension in view. If doctors had considered only Jaymee's physical condition they would have been treating her in a reductionistic way. It is likely that in considering the potential distress, suffering and trauma caused by the potential treatment,[73] some doctors recognised the treatment's effects beyond the physical level. This implies their awareness of Jaymee's mental and emotional states of being. Recognising and considering all dimensions of personhood contributes to a holistic view of persons and is crucial to appropriate interaction.[74]

Through her treatment with Dr Gravett, Jaymee's leukaemia did go into remission for approximately one year, but the cancer returned and she died.[75] One concern in treating Jaymee holistically is that in the desire to keep her alive at all costs, Jaymee endured more pain and distress, physically, emotionally, and mentally, from this treatment than from palliative care. We are appropriately concerned if some people's desires, wishes, and values have the effect of bringing about pain, distress, suffering, or harm to others on different levels. To prevent this from happening we need a means of monitoring and balancing different levels of personhood and ensuring minimum standards of protection for people.[76]

In utilising a middle way model to analyse the persons and relationships in this case rationality is crucial in making and justifying decisions. The role of the law in ensuring protection and prioritising conflicting decisions was explored. Conflict

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[72] Ibid., 134-5. See p. 264.
[73] Ibid., 134-5. New, "The Rationing Agenda in the NHS," 1596.
[74] See pp. 215-17, 237-45.
[75] New, The Rationing Agenda in the NHS," 1596.
[76] See pp. 223-37, 268-73.

arises because of differing values and frameworks which affect people's choices and decisions. Some dangers of a utilitarian framework in health care decisions were emphasised. In contrast, the importance of holistic treatment of Jaymee, including the role that intrinsic worth and value have in balancing the dignity and integrity of patients and clinicians, was examined. This balance included considerations of Jaymee's quality of life versus her life itself and prolonging it at all costs. Such decisions and conflict resolution involves assessing our responsibilities.

Responsibilities

In this case, there are a number of people who had responsibilities, such as the patient, even a child patient, family, doctors, nurses, health authority, courts and government. As the central figure, Jaymee had a responsibility to share with the doctors information about her condition and her wishes regarding treatment options. As family members, Jaymee's parents had a responsibility to protect and pursue her best interests and provide care and support for her. Some could argue they also had a responsibility to pursue every chance of lengthening their daughter's life, however small. If so, it was appropriate for Jaymee's parents to pressurise the doctors, nurses and health authority for further treatment, but they could not force them to treat her. A difficulty arose when her parents' responsibilities to Jaymee, as their daughter, led to conflict with the doctor and nurses' responsibilities to her as patient.

The doctors and nurses first had a minimum professional responsibility of non-maleficence to Jaymee based on treating her as an individual with intrinsic worth and value and as an end in herself. Doctors and nurses also had a responsibility to provide care for her, to assess and protect her best interests, to explain the treatment options and likely outcomes, and to help cure the leukaemia if possible. The doctors

also had a further professional responsibility to offer to refer her for a second opinion if her parents wished. The doctors and nurses did *not* have a responsibility to treat Jaymee based on pressure or demands, from her or her parents, which went against their clinical judgment. Simultaneously, the doctors and nurses also had wider responsibilities to their other patients, other professionals, the health authority and government.

Instead of treating Jaymee aggressively and experimentally, the doctors and the health authority sought to fulfil their professional responsibility to protect her best interests. They believed the proposed treatment was not likely to be successful, would cause 'considerable suffering' and distress to Jaymee, and that a course of palliative care was preferable.[77] In protecting Jaymee's best interests, as they judged them, the doctors also sought to fulfil another part of the minimum standard, namely non-maleficence.

In attempting to restrain harm the doctors faced a dilemma. They knew the proposed chemotherapy and second bone marrow transplant would cause significant suffering,[78] but if they did not treat Jaymee she would die. Consequently, they had to choose between the lesser of two harms. Considering the very slight likelihood of success, the doctors decided sparing Jaymee additional pain and distress would be in her best interests, even though the leukaemia would progress. They believed her remaining quality of life would be better without further intensive medical treatment.[79] Recognising the need for prioritising responsibilities when they conflict and that we might have to choose between the lesser of harms, rather than between a harm and benefit, is vital for decision-making in reality.

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[77] R v Cambridge Health Authority, ex p B [1995] 2 All ER 134-5.
[78] New, "The Rationing Agenda in the NHS," 1596. R v Cambridge Health Authority, ex p B judgment [1995] 2 All ER 129.
[79] R v Cambridge Health Authority, ex p B [1995] 2 All ER 134-5.

In contrast to the doctors, Jaymee's parents focused on seeking a potential benefit for her, rather than avoiding some harm. As Jaymee's parents ultimately were trying to protect her from harm, their decision to seek further treatment was somewhat questionable given its experimental nature,[80] the very small chance of it being successful,[81] and the pain and distress it would cause her.[82] Jaymee's parents were not fulfilling their minimum responsibility to protect her from pain and harm. Alternatively, they chose to pursue a maximum responsibility. As they were pursuing any chance of extending her life, which they viewed as a benefit, then seeking further treatment was their only option. Yet, it is necessary to question whether the extension of life was actually a benefit to Jaymee. This extension might not have been as significant a benefit to Jaymee as she endured the additional and considerable pain and suffering of further treatment. It might have been more beneficial to her parents, as they wanted to prolong Jaymee's life and not lose her. In so doing, it seems Jaymee's parents placed more value on her life itself rather than its quality.

Her parents' perspective of what was in Jaymee's best interests and would benefit her conflicted with the NHS doctors' and health authority's view. When disagreement arose, Jaymee's parents appealed to the courts.[83] Part of the function of the legal realm is to help prioritise responsibilities when they conflict and the conflict cannot be resolved amicably. Its other responsibilities include restraining harm to people, upholding and enforcing the law, dealing with abuse and lawbreaking, and supporting justice and fairness. In this case the courts were divided as to the priority

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[80] Ibid., 134, 135, 136-7.
[81] Ibid., 129, 132, 133, 134.
[82] Ibid., 134-5.
[83] Ibid., 129.

of responsibilities.[84] Ultimately, the health authority's view of Jaymee's best interest and minimising harm to her was upheld and supported.[85]

There may be a difference between fulfilling responsibilities for minimum standards, like doing no harm, and maximum standards, like benefiting others. Maximum standards in a society or community include doing good, benefiting, or helping persons flourish. Doing good to Jaymee, according to her parents, meant prolonging her life.[86] Yet, prolonging life may not always achieve beneficence and, if it prolongs or adds to pain, suffering, and distress, it may actually be maleficent. For the doctors doing good to Jaymee meant relieving her suffering and providing palliative care.[87] Benefiting Jaymee also involved seeking her best interests. For her parents, this meant pursuing aggressive treatment. For the doctors, the slight chance of benefit from the treatment had to be weighed against the pain it would cause her.[88] Flourishing for Jaymee would have happened if the disease had been conquered completely. This was not possible and, even though she received some aggressive treatment, she experienced only a temporary remission.[89] It is important to note that helping a person to flourish may be part of an ideal standard for interaction in society, but the ideal is not attainable in all situations. The doctors and nurses involved in this case were more realistic in accepting the ideal of complete cure was unlikely to be attained, while Jaymee's parents, understandably, found it harder to accept this reality. An alternative view of flourishing for Jaymee was that she should be able to die with dignity. This ideal entailed that respect for Jaymee be maintained and she

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[84] Ibid., 129-30. See p. 258-9.
[85] Ibid., 129-30.
[86] Ibid., 129, 131. See also the previous discussion in this section, pp. 269-70.
[87] Ibid., 134-5.
[88] Ibid., 134-5.
[89] New, "The Rationing Agenda in the NHS," 1596. Jaymee and her parents might argue that even temporary remission was worth the struggle, pain and distress.

not die in agony. The doctors and nurses treating Jaymee sought to relieve her pain and suffering and were aware of this more attainable ideal standard.[90]

Furthermore, the notion of flourishing raises the issue of how the health authority balanced the considerations of treating Jaymee and attempted to help her flourish, against the flourishing of others. In Jaymee's case, the health authority decided not to treat her aggressively, so it choose to forego this slight chance of flourishing. The authority could have chosen to pursue the ideal standard of Jaymee dying with dignity. This maximum aim would not have conflicted with pursuing benefit to other patients. Instead, in justifying its decision to the courts, the health authority appealed to utility, not Jaymee's best interests and dignity alone.[91] This case highlights the potential conflict of interests in considering the flourishing of one life against many.

In applying a middle way model to responsibilities, doing good conflicts with the reality of limited resources. Doctors, nurses, patients, families, health authorities, and governments all have limited resources, whether physical, emotional, mental, or financial. There are more needs and demands being made than resources to meet them, which requires a means of prioritisation. The first stage in prioritising responsibilities is to identify for what and whom we are responsible. Then we assess our responsibility for upholding minimum standards of interaction with others, like the NHS doctors sought to do in restraining harm to Jaymee, protecting her best interests and providing care for her. Next we examine our responsibility to fulfil maximum standards, like facilitating benefits to people and helping them flourish. We also must acknowledge that our responsibilities are often complex and can be a

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[90] R v Cambridge Health Authority, ex p B [1995] 2 All ER 134-5.
[91] Ibid., 129, 132-3.

choice between harms rather than a harm and benefit, minimum rather than maximum responsibilities.

Principles of Justice

Part of what is needed to provide a minimum standard in society is a notion of justice as fairness and equality.[92] For Jaymee as patient, justice as fairness might involve giving her what she deserved or to what she was entitled. Desert would have depended on her exhibiting certain capacities or making certain contributions to a community, which as a terminally ill child she was not able to do. Fairness as entitlement would have depended on the amount of treatment she had received and resources used previously.[93] One alternative perspective of fair treatment would have been to view Jaymee as an individual with intrinsic worth and value and as an end in herself. Treating her this way would not necessarily have supported further aggressive treatment, but instead preserved her integrity by allowing her to die with dignity.[94] Even if this view did support further treatment, one crucial difficulty would be the non-universalisability of the decision, as not all patients in her condition would be able to receive this treatment. For some, if the decision was not universalisable, it would not have been fair. If it was not fair, it would not have been properly justifiable. These perspectives of fairness would not support further treatment for Jaymee as being just.

Addressing what is just and fair regarding Jaymee's parents entails being just to them and noting their view of justice. This includes listening to them, considering their wishes, taking their views seriously, explaining treatment options, and offering

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[92] See pp. 230-3.
[93] New, "The Rationing Agenda in the NHS," 1596. R v Cambridge Health Authority, ex p B [1995] 2 All ER 129.
[94] See pp. 263-6.

to refer them for a second opinion if they so desired. After determining whether the decision was fair, the health authority assessed whether saying 'yes' or 'no' to her parents' wishes was in Jaymee's best interest. In saying 'no' the authority was acting in a fair and just way as it decided the treatment was inappropriate.[95] Furthermore, the authority could universalise this decision and not treat other patients in Jaymee's condition aggressively, but provide palliative care. The authority did justice not only to Jaymee and her parents but also to others and, in fact, the Appeal Court upheld the authority's justification of its decision.[96] Different factors within fairness affect decision-making, including desert, entitlement, intrinsic worth, universalisability and justification.

Being just and fair to the doctors and nurses in this case entailed considering their clinical diagnosis, prognosis, and judgment of the patient. The health authority's decision was closely related to the clinicians' assessments, as it carefully considered their views regarding Jaymee's condition and treatment. In being fair and just the authority also had to consider the views of the patient, family and other potential patients. Justice from the authority's point of view may have entailed treating Jaymee appropriately and in her best interests, while being aware of the implications, primarily financial ones, that treating her had for other patients.[97] Given the unlikely chance of success,[98] the treatment's experimental nature,[99] and the pain and distress it would cause,[100] the authority acted fairly in refusing to treat Jaymee further.[101]

So, justice as fairness involves desert, entitlement, and treating Jaymee as an individual with intrinsic worth and as an end in herself. Fairness also entails not

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[95] New, "The Rationing Agenda in the NHS," 1596.
[96] R v Cambridge Health Authority, ex p B [1995] 2 All ER 136-8.
[97] Ibid., 129-30, 135.
[98] Ibid., 129, 132, 133, 134, 136-7.
[99] Ibid., 129-30, 135, 136-7.
[100] Ibid., 134-5.

conceding to people's desires, requests, and wishes, as with Jaymee's parents. These views of justice do not support further aggressive treatment in this case.

Justice includes not only fairness, but also equality.[102] To apply equality in this case, we need to be assured either that the Cambridge Health Authority would have treated a similar case in the same way or a different health authority would have made the same decision about Jaymee's treatment, *ceteris paribus*, other things being equal. Justice as equality implies a necessary level of consistency in treating like cases in similar ways. Alternatively, we would consider it unequal treatment if a similar case was funded by the Cambridge Health Authority, or a different health authority had funded treatment for Jaymee, *ceteris paribus*. In opposing inequality, we want to prevent inappropriate discrimination among and between cases. Equality requires a level of consistency and safeguards against inappropriate discrimination in decision-making.

Part of the difficulty with being fair and equal in treatment of patients is highlighted when extraordinary treatment is needed. This case required "experimental",[103] or extraordinary, treatment. The doctors and the health authority had difficulty in assessing what was fair and equal for Jaymee, particularly because she required a *second* bone marrow transplant.[104] This dilemma might have been exacerbated because there were not accepted standards for providing this experimental and extraordinary treatment. This lack of accepted standards may have required new criteria for treatment and that clinicians proceed with caution. They could have looked for parallel cases to guide their decisions. Yet, the unusual or exceptional nature of Jaymee's case did not necessarily justify treating her. If it had,

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[101] Ibid., 129-30, 136-8.
[102] See pp. 230-3.
[103] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129, 136-7.
[104] Ibid., 129.

then the authority would have set a difficult standard to follow in treating other exceptional cases. The authority could not universalise such a decision and treat all such cases because resources are not set aside for extraordinary and ordinary treatments in the same way. Given its constraints, the health authority chose fairly, equally and appropriately. Doctors, nurses, patients and health authorities have difficulty balancing best interests, needs and resources to make a fair and equal decision, particularly in exceptional or experimental cases lacking an accepted standard of treatment.

When closely examining the views of the doctors in this case, there was differentiation in their assessments of Jaymee's condition and the likely success of treatment. Among NHS doctors involved, most believed the treatment was not in her best interests,[105] but one clinician, Professor Goldman at the Hammersmith Hospital, indicated willingness to treat Jaymee.[106] The private sector, not surprisingly, also was willing to treat her.[107] So, depending on which doctors assessed Jaymee's condition, her treatment would not have been necessarily the same. Yet, some differentiation between clinicians' decisions seems inevitable given different personalities, moral perspectives, treatment options and judgments. This reality supports the need for certain minimum standards of treatment for patients and minimum professional standards for doctors and nurses to use in decision-making, such as non-maleficence, providing care, and seeking the patient's best interests.[108] It is crucial to recognise

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[105] Ibid., 133-5.
[106] Ibid., 132. Although he noted the Hammersmith did not have any available beds at the time, and so he was not able to offer Jaymee treatment.
[107] Ibid., 133.
[108] See pp. 268-70. See also discussion of responsibilities in chapter 5, pp. 223-9.

that different perspectives and criteria inevitably will help or hinder justice depending on what has been agreed and defined as just.[109]

Equity allows for justified differences in treatment, particularly for morally appropriate reasons.[110] In this case justified reasons for the health authority not to fund Jaymee's further aggressive treatment included its small chance of success,[111] the pain and distress caused,[112] the fact that her doctors did not think it was in her best interests,[113] and its experimental nature.[114] The Appeal Court supported the authority's justifications and its decision not to treat Jaymee.[115] In contrast, one justified reason for the health authority to fund Jaymee's treatment was her young age. The Appeal Court recognised the importance of this factor, stating "that this is a case involving the life of a young patient and that that is a fact which must dominate all aspects of the case."[116] Ultimately, despite this fact, the Appeal Court did not view it as an overwhelming or justifiable reason to rule against the health authority's decision and force it to fund the treatment.[117]

Justice as fairness, equality and equity as a means of assessing the decisions made in this case were analysed. Fairness based on desert, entitlement or intrinsic worth did not support further aggressive treatment for Jaymee as being just. Equality involves consistency and opposes inappropriate discrimination. The extraordinary and experimental treatment in this case, the universalisability of decisions and

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[109] For example, prioritising treatment with respect to age rather than needs would have serious implications for the elderly, as within this criteria they could be refused treatment in favour of younger patients. See Crisp, Ebbs and Hope. "The Asbury Draft Policy on Ethical use of Resources," 1528-31. These authors offer an interesting discussion of different ethical perspectives for allocating resources. They note that age, the dependency on the patient of close relatives, and the patient's responsibility for causing harm to his/her condition are factors which may be relevant to allocation resources.

[110] See pp. 233-7. See also Downie and Telfer, *Caring and Curing*, 76.

[111] New, "The Rationing Agenda in the NHS," 1596. R v Cambridge Health Authority, ex p B [1995] 2 All ER 129.

[112] R v Cambridge Health Authority, ex p B [1995] 2 All ER 134-5.

[113] Ibid., 129.

[114] Ibid., 129, 136-7.

[115] Ibid., 136-8.

difficulty of balancing best interests, needs, resources and providing equal treatment for all patients were examined. Equity considered justified differences in treatment, including Jaymee's age, and the appropriateness of the decisions made by the health authority. The considerations of fairness, equality and equity supported the health authority's decision as just. Applying and assessing justice is an important aspect of a middle way model.

Appropriateness

The dispute regarding the appropriateness of Jaymee's treatment arose because her parents disagreed with the doctors and health authority's decision. NHS clinicians did not view aggressive treatment as appropriate for Jaymee[118] and proposed a course of palliative care.[119] An appropriate aim of the doctors was to provide comfort for Jaymee. Generally, appropriateness is determined with reference to a particular aim or end. There are particular features of the circumstances and context of a situation which surpass others in importance and, in light of these and other limits, appropriateness can be assessed.

Jaymee's parents, by contrast, thought that the health authority's decision was inappropriate and took it to court.[120] Given Jaymee was their daughter and they wanted to pursue every possible chance of cure, their actions were appropriate to and for her and their relationship. Her parents may have thought it was fitting that *their* or *any* child be given every chance of life.[121] The High Court supported Jaymee's

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[116] Ibid., 135-6.
[117] Ibid., 138.
[118] New, "The Rationing Agenda in the NHS," 1596. This was because these treatments were unlikely to succeed and likely to add more pain and distress to her condition.
[119] R v Cambridge Health Authority, ex p B [1995] 2 All ER 134.
[120] Ibid. 129.
[121] It can be argued that the decision to treat Jaymee, as a child, aggressively would have been supported from Rawls' original position. An agent behind the veil of ignorance would not consent to a system which discriminates against ill children. This is because the agents choosing from behind the

parents, and required the health authority to reconsider its decision, claiming the health authority "had not had regard to the father's views as to B's best interests".[122] This court saw the views and actions of Jaymee's father, in particular, as being appropriate to seeking her best interests. Although the Appeal Court overturned this decision, the judge noted the family's view of Jaymee's best interests, and the pressure placed on Dr Zimmern as "perfectly legitimate".[123] Thus, the Appeal Court also recognised that the pressure exerted by Jaymee's parents was appropriate. It is appropriate for parents to exert pressure as parents because they have special responsibility for their children. In cases where life-saving treatment is being desired, it is appropriate for parents to bring maximum pressure in order for their child to receive treatment.

These differences in opinion and conflicting judgments about what treatment and justification was appropriate for Jaymee stem partly from different relationships, but also different roles, which persons had in this case. The doctors had professional standards and responsibilities of non-maleficence and to protect Jaymee's best interests. One justification given in court by the doctors and health authority was the experimental nature of the treatment. The High Court ruled the health authority "had wrongly refused to allocate funds because it considered a second bone-marrow transplant 'experimental'".[124] This court did not view the term "experimental" as an accurate description of the treatment nor an appropriate ground on which to refuse to fund it. In contrast, the Appeal Court judge stated

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veil of ignorance are adults and to consent to a system in which one may not reach adulthood results in a logical absurdity. See Dickenson, "Is Efficiency Ethical?," 235.

[122] Ibid., 130.

[123] Ibid., 136.

[124] Ibid., 130.

> The plain fact is that, unlike many courses of medical treatment, this was *not* one that had a well-tried track record of success. It was, on any showing, at the frontier of medical science.[125]

Thus, this court upheld the health authority's use of the term "experimental" and viewed this as part of an appropriate justification for not treating Jaymee with it.

Despite the "experimental" nature of the treatment, at least one clinician, Dr Gravett, was willing to try a second bone marrow transplant provided Jaymee and her family thought it had a "worthwhile chance of success".[126] His willingness to treat on this ground supports the view that Jaymee's family, in contrast to doctors and nurses, knew what was best for her.

> In fact, Jaymee received a different experimental treatment.
>
> ...the treatment ultimately provided by Dr Gravett was not bone marrow transplantation but a leading edge treatment - namely, donor lymphocyte infusion. Only about 20 patients have received this treatment and Jaymee is thought to have been the only child.[127]

A vital question is whether using experimental treatments on people, particularly children, is appropriate. Administering experimental treatment could permit treating people as means to an experimental end, rather than ends in themselves. The proposed treatment was not appropriate to Jaymee as a patient and for Jaymee as a child, based on the potential risks being too high and the side-effects too unpredictable. Even though Jaymee's parents were willing to take the risks involved, ultimately she had to cope with the treatment and suffer its consequences. Her parents' actions and desires were *understandable* given their relationship and that they were trying to give her any chance of life, regardless of how small. Yet, they acted *inappropriately* in pursuing this treatment, and allowed their desire for Jaymee

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[125] Ibid., 137. My emphasis.
[126] Ibid., 133.
[127] New, "The Rationing Agenda in the NHS," 1596.

to live at all costs to cloud their judgment about her ultimate best interests and well-being.

The health authority justified the inappropriateness of the treatment on its "experimental" nature, the pain and distress it was likely to cause, its slight chance of success[128] and consideration of resources.[129] The High Court ruled the authority had not "adequately explained the funding priorities that had led to the decision".[130] Yet, this court did not clearly rule that the consideration of the use of resources was inappropriate. Instead it required the health authority to produce a more detailed account of how it reached its decision regarding resources. That qualification implies a recognition by the court of the appropriateness both of the decision-making process per se and of the place of resource allocation in that process. The detail demanded would then appear likely to offer a more sufficient and appropriate justification for the decision than had been supplied.

In contrast, the Appeal Court judge ruled references to resources were a reality for health authorities, and that

> Difficult and agonising judgments have to be made as to how a *limited budget* is best allocated to the *maximum advantage of the maximum number of patients*. That is not a judgment which the court can make. In my judgement, it is not something that a health authority such as this authority can be fairly criticised for not advancing before the court.[131]

This court upheld the idea that any health authority would have to address the notion of limited resources. It did not criticise the authority for not producing a more specific list of reasons for its choice, and supported the appropriateness of such decisions being made by a health authority and not the court, in the professional rather

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[128] R v Cambridge Health Authority, ex p B [1995] 2 All ER 129, 132-5. New, "The Rationing Agenda in the NHS," 1596.
[129] Ibid., 129-30. Cf. Dickenson, "Is Efficiency Ethical?," 229-46. Kilner, *Who Lives? Who Dies?*.
[130] Ibid., 130.
[131] Ibid., 137. My emphases.

than legal realm. Yet a judgment on the appropriate arena for making such decisions is not the only implication of this court's statements. The Appeal Court judge stated

> Having weighed the matter up and taken advice, particularly bearing in mind the suffering which even embarking on the treatment would inflict, the authority thought that they should not fund the treatment at all. I regret that I find it impossible to fault that process of thinking on their part.[132]

In the overturning of the High Court's ruling the Appeal Court judge seemed to support the health authority's decision as an understandable *and* appropriate one given all the considerations and circumstances of the case.

The decision of Jaymee's parents to seek aggressive treatment was understandable given they wanted to pursue every chance of a cure for their daughter, preserving her life at all costs. Yet, their decision was inappropriate given the added pain and distress of the proposed treatment and its experimental nature.[133] In contrast, when the doctors, nurses and the health authority considered these same factors, they judged the treatment as inappropriate for Jaymee.[134] Although the courts disagreed with each other, ultimately the authority's view of appropriate treatment was upheld.

Conclusion

A middle way model provides a frame of reference by which to assess the process of decision-making and the decision itself. It highlights key aspects, blending the ethics of care and justice, by which to explore the validity of decisions and the decision-making process. It provides a practical means of understanding, clarifying, evaluating and assessing moral decisions in nursing, medicine and the caring professions.

In examining the *context*, Jaymee's cultural and medical background affected

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[132] Ibid., 138.

expectations and decisions about her treatment. The change from health care to a legal setting highlighted a shift in the authority's justifications for its decisions. In the legal setting, the authority appealed to a utilitarian ideology, which conflicted with an assessment of Jaymee's best interests alone.

Persons are a key element within context and in their own right. The relationships and roles of the persons in this case affected their choices and decisions. In supporting those decisions, rationality and justification were crucial. The doctors and nurses used their clinical judgment regarding Jaymee's best interests. They sought to maintain their own and her integrity, highlighting the importance of holistic treatment of people. Jaymee's parents and the health authority held differing views of her best interests and offered different rationale and justifications for their decisions. The nature of the relationships, professional or personal, resulted in different judgments, decisions and justifications in this case.

Different types relationships support different *responsibilities*. Clinicians fulfilled their minimum responsibilities of non-maleficence and protecting Jaymee's best interests, through providing palliative care, and their maximum responsibility by attempting to allow her to die with dignity. The decision of Jaymee's parents to pursue further aggressive treatment was understandable particularly if they sought any chance of extending her life or to fulfil their maximum responsibility to help their daughter flourish. Yet, in trying to attain this ideal they did not fulfil their minimum responsibility of protecting her from harm. The health authority sought to fulfil its minimum responsibilities to protect Jaymee's best interests and to provide care for its other patients. These different responsibilities conflicted and the courts were called on to prioritise them, eventually ruling in favour of the health authority.

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[133] Ibid., 129, 132-5. New, "The Rationing Agenda in the NHS," 1596.

Applying *justice* involved fairness, equality and equity being assessed in relation to Jaymee, her parents, doctors and nurses, other patients and the health authority and the decisions made and justifications given. Fairness which focused on desert or entitlement did not support further aggressive treatment for Jaymee. Equality required a level of consistency in decision making and opposed inappropriate discrimination. The universalisability of deciding not to treat Jaymee aggressively, particularly regarding the treatment's extra-ordinary nature, supported the health authority's decision as fair and equal. Regarding equity, the health authority considered Jaymee's medical background, her age, the experimental nature of the aggressive treatment, its small likelihood of success and the additional pain and suffering. Although the health authority initially justified its decision based on Jaymee's best interests, it later relied on an utilitarian ideology. Such a framework does recognise the reality of limited resources, but does not necessarily provide a consistent means of making decision in practice and can allow the vulnerable or minorities to be 'sacrificed' for the good of others. Despite this danger the health authority's decision involved fairness, equality, was universalisable and equitable.

Analysing *appropriateness* in this case highlighted the decisions of Jaymee's parents as inappropriate given the experimental nature of the treatment and its further pain and distress. Their decisions were understandable as they were pursuing every chance of life for her and wanted to prolong her life at all costs. The doctors and nurses viewed further aggressive treatment as not in her best interests and inappropriate. The health authority agreed with clinicians' assessment, but also appealed to utilitarian considerations. Ultimately, the authority's decision and justifications were judged as appropriate by the courts.

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[134] Ibid., 129.

Practical assessment of this case supports the decision of the health authority in not treating Jaymee aggressively, but disagrees with its justifications. Instead of treating Jaymee over and against other patients and appealing to an utilitarian ideology, the health authority could have appealed to the maximum standard of allowing her to die with dignity. This justification would have been much clearer regarding the priority of Jaymee's best interests, intrinsic worth and value alone, not as weighed against other patients. It would not have conflicted with fairness, equality or equity and would have been a more holistic way of treating her. It would have been consistent with both the ethics of justice and care. This justification would have been both just and avoided the dangers of a utilitarian framework. Thus it would have been more appropriate.

Wider reflection on the application of a middle way model highlights key moral issues in practice. One important dilemma is the reality of conflicting views and assessments of best interests. These can be linked to different levels or types of responsibility, whether minimum or maximum, personal or professional. The necessity of prioritising responsibilities sometimes entails fulfilling minimum not maximum standards. This involves accepting the reality of deciding between the lesser of two harms, rather than a harm and a benefit. The legal realm has an important role in this prioritisation when conflicting views cannot be amicably resolved. Despite differences in responsibilities or relationships, the minimum of restraining harm, whenever possible, should be sought and achieved for all people.

More specifically, we may experience difficulties in decision-making when faced with extra-ordinary treatments or new moral dilemmas. In approaching these dilemmas it is helpful to look for parallel treatments or situations from which to draw guidance and to reflect carefully on the potential implications of our decisions in both

the short and long-term. More fundamentally, justifications for decisions, whether our own or others', can shift or change depending on the setting, context and advantages of hindsight. Shifts in justifications, as well as the justifications themselves, may be judged appropriate or inappropriate through critically reflecting on the situation. A middle way model provides a clear framework from which to assess decisions and justifications.

Chapter Seven: Conclusion

In reflecting on the application of a middle way model we inevitably return to the origins of the thesis, in the tension between the ethics of care and the ethics of justice, which highlighted the need for a middle way.[1] We need to focus in a self-critical way on the strengths and weaknesses, further development and application of a middle way model.

In exploring the debate and tension between the ethics of care and the ethics of justice, one main problem was in dichotomising these approaches to moral decision-making, implying that one was superior and the other inferior or that they were incompatible. A second difficulty was that those theorists who recognised both care and justice contained valid elements and approaches to morality did not provide a sufficient, coherent and comprehensive notion of a middle way.[2] Gilligan broached the idea of integration of care and justice, but her view is inadequate.[3] Friedman offered two possible means of incorporating care and justice in morality. The first was not integration at all, but relegated care to close personal relationships and justice to less familiar interactions with others. This approach involves settling for a dichotomization of both ethics. The second proposed a genuine "balance between" abstract and particularised commitments, justice and care, but did not elaborate on how this is to be achieved.[4]

A middle way seeks to offer a more coherent and sufficient model for the integration of the ethics of care and justice. It is more sufficient than either ethic

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[1] See pp. 1-3.
[2] See pp. 1-3.
[3] See chapter 1, especially pp. 14-20.
[4] See pp. 26-7. Friedman, *What are Friends For?*, 138-9.

alone as a framework for moral decision-making.[5] The adequacy of a middle way has been argued for in theory as well as its application tested in practice.[6] In drawing from both ethics in its development, the content of a middle way acknowledges the importance of both care and justice within morality. It is sensitive to the impact and effect that context, including background, setting, ideologies and frameworks, have on the choices and persons involved.[7] As people are crucial in any decision, a middle way acknowledges the importance of understanding their relationships and relatedness in community, whether personal or professional. It recognises the vital role that rationality and justification have for persons and their moral decisions, but balances this aspect with valuing people's intrinsic worth and dignity and a holistic perspective of them. Thus it avoids reductionism.[8] Within the context of relationships and communities arise responsibilities, both positive and negative. Maximum, or ideal, responsibilities and standards include doing good, benefiting others and helping people flourish. These are contrasted with minimum responsibilities and standards, which include non-maleficence, restraining harm and providing protection, and meeting basic needs.[9] A key factor in ensuring these minimum standards are upheld is recognising the import of and appealing to principles of justice, involving equality, fairness and equity. Equity entails assessing what differences in interaction are justifiable and appropriate in treating individuals and specific cases.[10] Appropriateness tempers the dangers of being too narrowly focused on either the particular or general levels of a moral dilemma. Its focus and application requires sensitivity to the specific, concrete aspects and the abstract

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[5] See pp. 247-8.
[6] See chapters 5 and 6.
[7] See pp. 203-8.
[8] See pp. 208-23.
[9] See pp. 223-9.
[10] See pp. 230-7.

principles in a given situation.[11] Thus a middle way model aims to provide a more adequate and holistic approach than the ethics of care, the ethics of justice or other proposed integrations. This is not to claim that a middle way is without limitation or problems.

Potential Problems with a Middle Way Model

In critically analysing a middle way model, potential difficulties and limitations can be located in its origins and nature as an amalgam, and the nature, status and application of the model.

Origins and Nature of an Amalgam

In creating any amalgam, a danger is that some benefit from the original sources may be lost. Therefore, in creating a middle way there is a danger that benefits provided by either the ethics of care or the ethics of justice are lost because its very nature as an amalgam gives substance to this criticism. It could be necessary to explore what is actually lost and whether or not such a 'loss', if so deemed, is or is not offset by the gains of a middle way. In fact, the actual analysis of these ethics showed neither ethic on its own was perceived as adequate.[12] In that light, some theorists recognised there might be room to explore the notion of care and justice working together. In practice, these theorists did not provide sufficient content to this possibility.[13] While acknowledging the risks inherent in any amalgam, a middle way model is proffered as one possible means of combining elements from both the care and justice ethics in an attempt to demonstrate, both theoretically and practically, that

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[11] See pp. 237-45. Also chapter 6.
[12] See chapters 2-4.
[13] See pp. 1-3.

they can be used to provide a more balanced and sufficient means of approaching moral decisions than either ethic alone.

On a different level, another danger of this amalgamated model is that in transposing core ideas from one arena to another, such as the ethics of care or justice, the framework and context for a full and proper understanding of those ideas or elements is lost. There is the danger of decontextualising aspects of care or justice. Secondly, in drawing core ideas from both care and justice, the elements of a middle way may try to marry different underlying philosophies which may, in fact, be irreconcilable. A coherent framework for approaching moral decisions might not be forthcoming.

A response to these critical points may be made on two levels. It is interesting to ask how any knowledge, science or understanding would be possible if we did not transpose ideas and theories from one context to another. Nursing and medical sciences depend on just such a transposition for diagnosis, prognosis, care and cure. Ideas obviously do arise and are framed in contexts, but that does not mean they contain only particular relevance. They may have universal aspects, components and significance. Any idea may have both specific and universal meaning and elements. Taking ideas from one context and transposing them to other contexts does require care and awareness of any change of meaning or use. However, any universal elements will be universalisable and may be used without loss of that meaning. For example, the thesis addresses the importance of the element of community as part of our understanding of persons in relationships. In any and every context, the nature of specific communities needs to be defined and understood. There may be common elements in all communities such as relationships, need meeting, care, belonging, and including and excluding criteria. These may be universal. But even more basic and

universal is the very concept of community itself, which can be properly applied across and between different communities and contexts.

Another level of response to these critiques is to propose that the five elements of a middle way model have both specific meanings and philosophies from which they are drawn and universal components. There seems little doubt that any adequate examination of moral decisions, must involve some awareness of the importance and significance of context, persons in relationship, responsibilities, justice and appropriateness, or some synonyms for these concepts and realities.

Furthermore, it might be suggested that the development of this middle way points towards a common form and content of morality. When we have and participate in moral discussion and debate, we inevitably make reference to the issues and content of these five themes. They are part of what it means to take part in moral discourse at all. In such moral discourse, we recognise what counts as and offer suitable justifications for our decisions and actions. Justification is a universal aspect of moral language and processes. We deem these justifications as morally acceptable or unacceptable.[14] People often do not agree on specific moral justifications or issues, but they recognise moral discussion and justification as necessary in society.

The middle way of the thesis also points to some areas which may comprise part of a common content, or core, within morality. Such a moral core may entail some recognition of context and its importance in understanding the role of frameworks and ideologies;[15] responsibilities, whether minimal or maximal;[16] the importance of some type of justice, whether as fairness, equality, equity, desert or entitlement;[17] and explore commonality in humanity, particularly regarding

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[14] See pp. 222-3.
[15] See pp. 203-8.
[16] See pp. 223-9.
[17] See pp. 230-7.

rationality, dignity, holism and some form of relationships and community.[18] The thesis seeks to give specific content to some of the universal, common elements which are part of the existence of morality and moral justification. This middle way tries to point to a universal recognition of the importance of morality, as well as offering content to a potential common moral core.

Problems may or may not be associated with the origins and nature of any amalgam. The nature and status of a middle way model may also raise issues and questions.

The Nature, Status and Application of the Middle Way Model

Within moral philosophy generally, it may seem that there is little new under the sun. The nature and novelty of any middle way is open to debate. The tension between justice and care, abstract principles versus particular people and contexts, can be found in classical philosophy. This particular middle way model stands within, yet seeks to go beyond, the recent academic debate between the ethics of care and the ethics of justice. It provides a concrete model of one amalgam of the ethics of care and justice in theory and seeks to test its application in practice.

Some might argue the middle way model is too complex to be of use to people in practice or that its content is too cumbersome to retain and utilise in daily life. It is appropriate to reflect on the nature of the model. Perhaps most moral decision-making in medical or nursing practice seems to happen by osmosis or automatically. Yet, it is vital to have in place a framework for moral decision-making. This is potentially important when the old, tried and tested ways of approaching moral

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[18] See pp. 208-17.

dilemmas break down and do not work or when facing a brand new problem.[19] It is not clear yet how effective this middle way model will be until it is regularly and widely practised. The more it is applied, the more reliable will be any judgment about its usefulness.

The claim that it is too complex depends on whether this level of analysis and detail is expected all the time and in every situation. This need not be the case. What is important is to demonstrate that the model can and does deal sufficiently with complicated and hard cases. Moral decisions and dilemmas are often extremely intricate. It is no surprise, therefore, that the framework proposed is relatively complex. If it was not, it would be of little theoretical or practical value.

The second objection is that the model is too cumbersome. The content of the middle way can be streamlined to focus on the five core elements of context, persons in relationship, responsibilities, principles of justice and appropriateness. This criticism seems to imply a rather static view of the model. In fact, it can be understood more dynamically offering a range of entry points to dilemmas at any one of the five main elements. It is then possible to progress through the model returning to the original entry point. Such flexibility is vital in the application of the model to different cases or situations. The following diagram illustrates the various entry and flow options and seeks to give an idea of the content to be considered under each element.[20]

Even with such flexibility, too much must not be claimed for this model. It needs to be tried and tested beyond the scope and confines of this thesis. Any complexity and cumbersomeness may be overcome as it is more widely practised and

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[19] See pp. 183-4, 224. Brand new moral dilemmas have been created with the advancement of medical science, such as genetic screening and engineering.
[20] See Diagram 1, p. 294.

CONTEXT
Setting/Background
Culture
Frameworks/Ideologies
Persons

PRINCIPLES OF JUSTICE
Fairness
Equality
Desert/Entitlement
Equity

APPROPRIATENESS
Fitting v. Unfitting
Decorum
Professional Standards
Communal Standards

PERSONS IN RELATIONSHIP
Rationality
Intrinsic Worth
Holistic View
Relatedness/Community

RESPONSIBILITIES
Minimum v. Maximum
Positive v. Negative
Benificence
Non-maleficence
Conflict

adapted to specific moral dilemmas and decisions. It cannot be a totally finished product. It needs refining and improvement in light of its application, performance and usefulness to a wide range of cases.

In contrast to viewing the middle way as being too complex, some might argue that it is, in fact, too common-sensical.[21] However, what may appear as a vice can be construed as a virtue. This middle way has origins in common sense, but it builds on and moves beyond common sense. It articulates what happens within moral decision-making in actual practice, rather than merely being based on the application of some theoretical construct. It seeks to develop this practical decision-making further through providing a clear structure and framework which support a consistent and reflective means of approaching and assessing moral dilemmas.

If a framework for moral decision-making is to be useful in theory and practice, appealing to common sense is not necessarily a negative trait. Common sense can be a good and useful characteristic, particularly when it contributes to clearer communication about dilemmas and choices. As this middle way incorporates common sense, it is not too obscure or removed from the realities of life. People may be more likely to appeal to and use it. Yet, being common-sensical does not mean this middle way is simplistic. The combination of concrete and abstract elements recognises the complexities of moral life and decisions and encourages people to reflect on them both in theory and practice. This middle way does not gloss over the difficulties of moral dilemmas, but provides a clear framework and structure for moral consideration and making choices. It offers key elements to maintain a balanced approach to moral decisions which is not just common sensical.[22]

Morality in General

In addressing morality more generally, MacIntyre argues that modern moral pluralism makes it impossible either to engage in or resolve moral debate.[23] An alternative view might propound that moral pluralism furnishes an opportunity for genuine moral discussion and debate. Despite its limitations, a middle way model provides a moral framework which incorporates and builds on common sense and opposes relativism. It articulates the content of and context for moral discussion as well as decision-making.[24]

Part of the usefulness of this middle way may be the moral areas to which it draws attention. The middle way highlights views of human nature, whether optimistic or pessimistic, and their implications for decision-making.[25] It also notes human values, which can include virtues. Virtues can be described as sentiments, but are more adequately viewed as skills.[26] Virtues are drawn from both the ethics of care and the ethics of justice, including integrity, reciprocity, commitment, responsibility, justice, fairness and rationality.[27] Underlying these values and virtues are ideologies, whether Kantian, utilitarian, individualistic, communitarian or principled. Through analysing these assumptions and ideologies this middle way clarifies their impact on moral decision-making and points to a common core for morality and common process of decision-making.[28] It is vital to note that this common moral core is a combination both of key elements from the framework itself and the practical

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[21] Yet this critique is contradictory to a middle way being too complex. So, both objections cannot be true.
[22] See pp. 237-45, chapter 6.
[23] See pp. 142-3.
[24] See chapters 5 and 6.
[25] See pp. 59-60, 68-84, 223-37.
[26] See p. 191.
[27] See chapters 2-4.
[28] See chapter 5.

application of a middle way. Thus, this model seeks to integrate not only the ethics of care and justice, but moral theory and actual practice.

Although the sufficiency of a middle way model has been argued for both in theory and practice,[29] there may be limitations in applying it. One such limitation may arise because the model draws on three principles of justice - fairness, equality and equity - rather than simply focusing on one. In practice, any such decision-making model may need to rely, at least primarily, on one principle of justice. Whether this is necessary or ideal, and how one might choose between competing principles of justice, will need further work and reflection.

No view is without weaknesses. In critically reflecting on the potential problems of the middle way model we have identified for further debate, reflection and practice the risks inherent in any amalgam, the danger of decontextualising ideas and elements, whether this model is too complex, cumbersome or common-sensical in nature, and limitations in its application.

Beyond a Middle Way

In critically reflecting on this middle way, there are numerous areas which warrant more detailed investigation. These include the effect of context on people and their choices,[30] the importance of commitment and accountability in community or communities,[31] some means of assessing reciprocity and mutuality both professionally and personally,[32] limits within caring,[33] the relationship between different capacities and justice as desert or entitlement,[34] how rationality, particularly

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[29] See chapters 5 and 6.
[30] See pp. 203-8.
[31] See pp. 222-3.
[32] See pp. 220-2.
[33] See pp. 227-9.
[34] See pp. 209-10, 233.

phronesis, aids fitting and appropriate judgments[35] and the nature of equity, appropriateness[36] and *eudaimonia*.[37]

We live in a world where one of the key moral issues facing health care is the allocation of resources. Any decision-making framework must be able to address such questions. One way forward is in extrapolating from a middle way by exploring the distinction between needs and wants, as addressing them relates to minimum and maximum standards and responsibilities in society. Exploring further the nature and content of both standards also is vital if we are to fulfil the minimum for all people and begin to aim for the maximum. Practical means of achieving these different levels and goals needs further research if a middle way is to be applied more widely and used in teaching and communication.

Emphasis on the vital role of minimum and maximum standards and responsibilities within morality is a vital and beneficial aspect of this middle way. Being clear which standard is the focus in a decision is crucial for clarifying the expectations, implications and appropriateness of the choices made and justifications provided. The minimum standards necessary in any society or community include non-maleficence, meeting basic needs, and fair and equal treatment. The middle way also recognises the importance of striving for maximum, or ideal, standards which include doing good and benefiting others, helping all people flourish and being equitable.[38] Distinguishing between these standards also assists in prioritising to and for whom and what we are responsible.[39] Clearly, more work is needed in developing and applying relevant criteria and standards for needs, wants, maximum and minimum standards.

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[35] See p. 211.
[36] See pp. 233-45.
[37] See pp. 216-17.
[38] See pp. 223-9.

Beyond the confines of this thesis, this middle way model can be applied to a variety of dilemmas and decisions. Potentially it may be utilised on both macro and micro levels. It might be applied to decision-making within a larger framework, such as a hospital and to a specific patient's difficult case. It could be used in educating and training health care professionals, particularly nurses and doctors, as it provides a clear structure and framework for approaching moral dilemmas. A middle way model does not necessarily produce one 'right' answer in a given case. What it does is illuminate the minimum standards below which it is unacceptable to fall, maximum standards for which to aim, implications and more or less appropriate decisions. It helps everyone involved identify the nature, practice and scope of moral decision-making and of the justification of and for decisions made.

Concluding Remarks

In critically reflecting on a middle way model, its formation, development and application, its sufficiency and superiority to either the ethics of care or the ethics of justice alone has been shown. In contrast to other proposed integrations, a middle way furnishes a more coherent and comprehensive amalgam of these ethics. Through its core elements of context, persons in relationships, responsibilities, principles of justice and appropriateness, it seeks to provide a clear framework for entering into, comprehending and positively contributing to moral discussion and dilemmas. It not only illuminates the importance of values, ideologies, assumptions and their implications, but offers a means of assessing them and making decisions. This model can be applied to communicating with, educating and training people, both professionally and personally, to reach good and appropriate decisions through

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[39] See pp. 223-4.

balancing the concrete particulars and abstract principles and distinguishing between the minimum and maximum standards in any situation. It is not the only way of exploring decision-making; nor is it fully or finally developed. However, it is not simply a starting-point, but part of a process indicated by feminist writing, Gilligan's work and the critical debate which followed, refined by various care and justice theorists to produce a contribution to decision-making and justification of moral decisions. In aiming for and achieving this wider application, the hope is that this middle way model uniquely contributes to moral theory and to the cultivation of good and virtuous people.

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